FEDERAL REGISTER

VOLUME 20 NUMBER 171

Washington, Thursday, September 1, 1955

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10634

PROVIDING FOR LOANS TO AID IN THE RECONSTRUCTION, REHABILITATION AND REPLACEMENT OF FACILITIES WHICH ARE DESTROYED OR DAMAGED BY A MAJOR DISASTER AND WHICH ARE REQUIRED FOR NATIONAL DEFENSE

By virtue of the authority vested in me by the Defense Production Act of 1950, as amended (50 U. S. C. App. 2061, et seq.) and as President of the United States, it is hereby ordered as follows:

Whenever financial assistance is not otherwise available on reasonable terms, provision may be made for loans (including participations in, or guarantees of, loans) under Section 302 of the Defense Production Act of 1950, as amended (50 U. S. C. App. 2092) to aid in carrying out the reconstruction, rehabilitation, or replacement of facilities which are destroyed or damaged by major disaster as defined and determined under the provisions of the Act entitled, "An Act to authorize Federal assistance to States or local Governments in major disasters, and for other purposes" (64 Stat. 1109) whenever such facilities are required for national defense as determined by the Director of the Office of Defense Mobilization.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
August 25, 1955.

[F. R. Doc. 55-7131; Filed, Aug. 31, 1955; 11:06 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

Subchapter E—Naval Stores

PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES

MISCELLANEOUS AMENDMENTS

Pursuant to section 4 of the Naval Stores Act (7 U. S. C. 94) and sections 203 and 205 of the Agricultural Marketing Act of 1946 (7 U. S. C. 1622, 1624) it is hereby ordered:

1. a. Section 160.1 of the regulations for naval stores (7 CFR 160.1) is amended by changing paragraph (c) thereof to read as follows:

(c) "Administrator". The Administrator of the Agricultural Marketing Service of the Department, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

b. Wherever elsewhere in the regulations for naval stores (7 CFR 160.1 through 160.97) the word "Secretary" appears it is deleted and the word "Administrator" is substituted therefor.

2. A new section is added to the regulations for naval stores to appear in 7 CFR after § 160.24 as follows:

§ 160.24a *Inspection as to condition of drums containing rosin and the quality and condition of the rosin therein upon request.* Before or after the shipment in commerce of any lot of rosin in drums from a processing or storage point, and upon request by an interested person, an inspection may be made by an official inspector of the external appearance of the drums, and a report may be made by such inspector, on the basis of such inspection, of the condition, including soundness, of the drums with reference to the effect thereof upon the quality, and preservation of the quality, of the rosin in the drums. In conjunction with such service, when practicable, the inspector may upon similar request determine and certify the grade, class, other quality, or condition of the rosin within the drums, and report the internal condition of the drums, under any applicable standards and procedural instructions issued to such inspector by the Administrator. Certificates and reports issued under this section will be furnished only to the interested person requesting the service. Fees and charges for service under this section shall be paid by such interested person in accordance with §§ 160.201, 160.202, and 160.204.

3. Section 160.76 of the regulations for naval stores (7 CFR 160.76) is amended by deleting "$4.00" and substituting therefor "$5.00" and by deleting the period at the end of said section, substi-

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

tuting a colon therefor, and adding to the section the following proviso: *"Provided,* That when any set of standards issued on loan shall need servicing more often than once in any fiscal year, in order to maintain them in accurate condition for grading, and the need for such extra servicing is deemed by the Administrator to be the result of improper handling and use of the standards by the interested person or his agent, such person shall pay an additional amount of $5.00 for each such additional servicing, plus the cost of any parts or components of the standards replaced in such servicing, and any postage charges incurred by the Department in connection therewith."

4. Section 160.201 of the regulations for naval stores (7 CFR 160.201) is amended to read as follows:

§ 160.201 *Fees generally for field inspection and certification of naval stores and drums containing rosin.* Except as provided in § 201.204 of this chapter, the following fees shall be paid to the United States for the field inspection and certification of naval stores and drums containing rosin, not conducted under a cooperative agreement and where laboratory analysis or testing is not required:

(a) *Inspections by licensed inspectors at eligible processing plants*—(1) *Rosin (grading and incidental certification as to class, condition and weight)*

(i) In drums (see Note 1), per drum	$0.05
(ii) In 100 pound bags (see Note 1), per bag	.01
(iii) In tank cars, per car	2.50
(iv) In tank trucks, per truck	1.25

(2) *Turpentine (grading and incidental certification as to class, condition, and volume)*

(i) In 55 gallon drums, per drum	$0.06
(ii) In tank cars or tank trucks, per unit of 100 gallons	.04
(iii) In bulk as delivered to tank steamer	See Note 2

(b) *Inspections by regularly employed, salaried Federal inspectors*—(1) *Rosin.*

(i) Grading and weighing at approved storage yards, per drum	$0.15
(ii) Grading at country stills: Up to and including 400 drums, per drum	.15
All over 400 drums, per drum	.08
(iii) Weighing at approved storage yards or country stills, subsequent to grading, per drum	.08
(iv) Inspection of condition of drums containing rosin on basis of external appearance only, per drum (Minimum charge, $2.00.)	.03
(v) Detailed inspection of drums containing rosin, and the rosin therein (see § 160.204).	
(vi) Re-certification under U. S. Certificate of rosin in lots moving in commerce, per drum	.01

(2) *Turpentine (grading and incidental certification as to condition and volume)*

(i) In drums of 55 gallons, per drum	$0.10
(ii) In tank cars or tank trucks, per unit of 100 gallons	.08
(iii) In bulk as delivered to tank steamer	See Note 2

NOTE 1. When the number of drums and bags inspected and certified at any one processing plant in any calendar month is the equivalent of 2,500 or more drums (counting five bags as equivalent to one drum), the fee shall be computed at the rate of four cents for each drum and eight-tenths cent for each bag inspected. The amount billed for inspection and certification at any one processing plant in any calendar month for less than the equivalent of 2,500 drums at the rates of 5 cents and 1 cent, respectively, shall not exceed $100, the amount chargeable for the equivalent of 2,500 drums.

NOTE 2. The fee to be charged for inspection and certification of bulk turpentine delivered from storage tanks or tank cars to tank steamers will depend on the point of loading and other conditions. Interested persons should obtain a cost estimate before having such inspection made. When no request for such cost estimate is received prior to the inspection, the fee shall be that computed by the Department to cover the cost of the service.

5. Section 160.202 of the naval stores regulations (7 CFR 160.202) is amended to read as follows:

§ 160.202 *Fees generally for laboratory analysis and testing.* Except as provided in § 201.204, the following fees shall be paid to the United States for laboratory analysis and testing, not conducted under a cooperative agreement, with respect to naval stores:

(a) *Rosin.* (See Note 3) (1) For comprehensive analysis to determine specification conformance, or chemical and physical properties usually related thereto:

Single sample (minimum)	$20.00
Each additional sample of same kind, tested at the same time (minimum)	15.00

(2) For limited laboratory testing as to kind, grade, or other factors related to quality or suitability for use:

Single sample (minimum)	$8.00
Each additional sample of same kind, tested at the same time (minimum)	4.00

NOTE 3. The analysis and testing of rosin involves many different types of laboratory procedures, requiring variable times for performance, and including other cost factors. The charge for such analysis and testing will depend on the type and extent of the work required to supply the information desired by the interested person requesting the service. When it appears that the minimum charges indicated in this section will not defray the costs of making the tests required, the interested person shall be so informed before any work is performed and will be supplied with a cost estimate of the actual charges to be made. See also § 160.204.

(b) *Turpentine.* (1) For comprehensive analysis to determine purity or specification conformance, or chemical and physical properties usually related thereto:

Single sample	$20.00
Each additional sample of same kind, and tested at the same time	15.00

(2) For limited laboratory testing as to kind, grade, or other factors related to quality or suitability for use:

Single sample	$4.00
Each additional sample of same kind, tested at the same time	3.00

6. Section 160.204 of the naval stores regulations (7 CFR 160.204) is amended by changing the last sentence thereof to read as follows: "The charges for time so spent shall be computed at the rate of $36.00 per eight hour day, or, if less than a day, $4.75 per hour, for laboratory work, and $30.00 per eight hour day, or, if less than a day, $4.00 per hour, for field inspection work."

The foregoing provisions in part authorize a new service to be available upon request of interested persons and to this extent they should be made effective as soon as possible in order to be of maximum benefit to such persons. The foregoing provisions also make changes in the schedules of fees for other inspection services furnished upon request, which are necessary to cover the costs of the services rendered as contemplated by the legislation authorizing the services. The costs of the services and the fees necessary to cover them are matters wholly within the knowledge of the United States Department of Agriculture. The foregoing provisions also make a change in the naval stores regulations which relates solely to a matter of internal management of the Department. Therefore, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) it is found upon good cause that notice of rule-making and other public procedure with respect to the foregoing provisions are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

The amendments of §§ 160.201, 160.202, and 160.204 of the naval stores regulations as set forth above shall become effective on September 1, 1955, with respect to services rendered on or after that date. New § 160.24a and the other amendments of the naval stores regulations as set forth above shall also become effective on said date.

(Sec. 4, 42 Stat. 1436, sec. 205, 60 Stat. 1090, 7 U. S. C. 94, 1624. Interpret or apply sec. 203, 60 Stat. 1087, 7 U. S. C. 1622)

Done at Washington, D. C., this 29th day of August 1955.

[SEAL] ROY W. LENNARTSON,
Acting Administrator
Agricultural Marketing Service.

[F. R. Doc. 55-7162; Filed, Aug. 31, 1955; 8:52 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 989—RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

SUBPART—ORDER, AS AMENDED, REGULATING HANDLING

DEFINITIONS

AUTHORITY: §§ 989.1 to 989.97 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c; 68 Stat. 906, 1047.

§ 989.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* (1) The findings hereinafter set forth are supplementary and in addition to the findings and determinations which were made in connection with the original issuance (14 F R. 5136) of this marketing order, and all of said previous findings and determinations, except the finding as to the base period for the parity computation, are hereby ratified and confirmed except insofar as such findings and determinations may be in conflict with the findings set forth herein;

(2) The amended order, as hereinafter set forth, and all of the terms and conditions thereof, tend to effectuate the declared policy of the act;

(3) Said amended order is applicable only to persons in the respective classes of industrial and commercial activities specified or necessarily included in the proposals upon which the amendment hearing has been held; and

(4) There are no differences in the production and marketing of raisins in the production area covered by said amended order, which make necessary different terms applicable to different parts of such area.

(b) *Additional findings.* It is hereby found that it is necessary, in the public interest, for the provisions of this amended order to become effective not later than the date of publication in the FEDERAL REGISTER. The acquisition of new crop raisins by handlers usually commences in substantial volume on or about September 1 of each year, and it is necessary that this amended regulatory program become effective on a date coinciding as closely as possible with the new marketing season. The changes in program operations which the amendments require are such that it is not feasible to commence regulation under the original order and later change to regulations under this amended order. Raisin handlers are aware of this amendment proceeding and have received copies of the regulatory provisions of the amended order. Also, it is expected that the Raisin Administrative Committee will give each raisin handler notice of the effective date of the amended order by telegram. This advance information should enable handlers to make such preparations as are necessary in order to comply with provisions of the amended order. On the basis of the foregoing facts and circumstances, good cause exists for making this amended order effective upon publication in the FEDERAL REGISTER, and it would be contrary to the public interest to postpone the effective date until 30 days after publication in the FEDERAL REGISTER (see 5 U. S. C. 1001 et seq.) Therefore, the provisions of this amended order shall become effective upon publication in the FEDERAL REGISTER.

(c) *Determinations.* It is hereby determined that: (1) The marketing agreement, as amended, regulating the handling of raisins produced from raisin variety grapes grown in California, upon which a public hearing was held at Fresno, California from April 4 to 9, 1955, both dates inclusive, has been executed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping raisins covered by this amended order) who handled not less than 50 percent of the volume of such raisins covered by this amended order;

(2) The issuance of this amended order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (July 1, 1954 through June 30, 1955), were engaged, within the State of California, in the production of raisin variety grapes for market; and

(3) The issuance of this amended order is favored or approved by producers who participated in the aforesaid referendum and who, during the determined representative period, produced at least two-thirds of the volume of raisin variety grapes represented in such referendum and produced within the State of California for market.

It is therefore, ordered, That, on and after the effective date hereof, the handling of raisins produced from raisin variety grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of this amended order; and the terms and conditions of said amended order are as follows:

DEFINITIONS

§ 989.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

§ 989.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq., 68 Stat. 906, 1047)

§ 989.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 989.4 *Area.* "Area" means the State of California.

§ 989.5 *Raisin variety grapes.* "Raisin variety grapes" means grapes of the Thompson Seedless (or Sultanina) Muscat of Alexandria (or Muscat) Muscatel Gordo Blanco (or Muscat) Black Corinth (or Zante Currant) White Corinth (or Zante Currant) and Seedless Sultana (or Sultana), varieties grown in the area.

§ 989.6 *Raisins.* "Raisins" means any raisin variety grapes from which a part of the natural moisture has been removed by sun-drying or artificial dehydration after such grapes have been removed from the vines.

§ 989.7 *Bleached raisins.* "Bleached raisins" means (a) any raisins which have been produced by soda dipping, with or without oil, whether sun-dried or artificially dehydrated, or (b) any raisins which have been produced by soda dipping, sulfuring, and sun-drying.

§ 989.8 *Golden Seedless raisins.* "Golden Seedless raisins" means raisins, the production of which includes soda dipping, sulfuring, and artificial dehydration.

§ 989.9 *Natural condition raisins.* "Natural condition raisins" means raisins the production of which includes sun-drying or artificial dehydration, with or without bleaching, but which have not been further processed to a point where they meet any of the conditions for "packed raisins" as defined in § 989.10.

§ 989.10 *Packed raisins.* "Packed raisins" means raisins which have been stemmed, graded, sorted, cleaned, or seeded, and placed in any container customarily used in the marketing of raisins or in any container suitable or usable for such marketing. Raisins in the process of being packed or raisins which are partially packed shall be subject to the same requirements as packed raisins.

§ 989.11 *Varietal type.* "Varietal type" means natural (sun-dried) Thompson Seedless, natural (sun-dried) Muscat, natural (sun-dried) or artificially dehydrated Sultana, natural (sun-dried) or artificially dehydrated Zante Currants, Layer Muscat, Golden Seedless, Sulfur Bleached, Soda Dipped, or Valencia raisins.

§ 989.12 *Producer* "Producer" means any person engaged, in a proprietary capacity, in the production of raisin variety grapes.

§ 989.13 *Dehydrator* "Dehydrator" means any person who produces raisins by dehydrating raisin variety grapes by means of artificial heat.

§ 989.14 *Processor* "Processor" means any person who acquires raisins and uses them within the area, with or without other ingredients, in the production of a product other than raisins, for market or distribution.

§ 989.15 *Packer* "Packer" means any person who, within the area, stems, sorts, cleans, or seeds raisins, grades stemmed raisins, or packages raisins for market as raisins: *Provided,* That any producer or dehydrator shall be deemed to be a packer, with respect to the raisins produced or dehydrated by him, only if he stems, cleans, seeds or packages them for market as raisins.

§ 989.16 *Handler* "Handler" means any person who ships natural condition raisins out of the area, or any processor or packer.

§ 989.17 *Acquire.* "Acquire" means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him: *Provided,* That a handler shall not be deemed to acquire any raisins (including raisins produced or dehydrated by him) while: (a) He stores them for another person or as handler-produced tonnage in compliance with the provisions of §§ 989.58 and 989.70; (b) he reconditions them, or (c) he has them in his possession for the purpose of inspection; and *Provided further* That the term shall apply only to the handler who first acquires the raisins.

§ 989.18 *Board.* "Board" means the Raisin Advisory Board established pursuant to § 989.26.

§ 989.19 *Committee.* "Committee" means the Raisin Administrative Committee established pursuant to § 989.39.

§ 989.20 *Ton.* "Ton" means a short ton of 2,000 pounds.

§ 989.21 *Crop year* "Crop year" means the 12-month period beginning with September 1 of any year and ending with August 31 of the following year: *Provided,* That the first crop year under this amended subpart shall begin at the effective time of this amended subpart: *And provided further,* That the crop year which began on August 15, 1954, is hereby extended from August 14, 1955, to the effective time of this amended subpart.

§ 989.22 *District.* "District" means any one of the geographical areas referred to in § 989.26 and specified in § 989.96 (Exhibit A).

§ 989.23 *File.* "File" means transmit or deliver to the Secretary or committee, as the case may be, and such act shall be deemed to have been accomplished at the time: (a) Of actual receipt by the Secretary or committee in the event of personal delivery (b) of receipt at the office of the telegraph company, in case submission is by telegram; or (c) shown by the postmark, in case submission is by mail.

§ 989.24 *Standard raisins and off-grade raisins.* (a) "Standard raisins" means raisins which have been certified as meeting the then effective minimum grade and condition standards for natural condition raisins.

(b) "Off-grade raisins" means raisins which fail to meet the then effective minimum grade and condition standards for natural condition raisins.

§ 989.25 *Part and subpart.* "Part" means the order regulating the handling of raisins produced from raisin variety grapes grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of raisins produced from raisin variety grapes grown in California shall be a "subpart" of such part.

RAISIN ADVISORY BOARD

§ 989.26 *Establishment and membership.* The Raisin Advisory Board is hereby established, consisting of 46 members of whom 36 shall represent producers, eight shall represent handlers and two shall represent dehydrators. The dehydrator members shall represent all dehydrators within the area and shall be selected from dehydrators as provided in § 989.29 (b) (4) The handler members of the board shall include the following: (a) One member selected from and representing handlers doing business as cooperative marketing associations, or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) two members selected from and representing the two handlers, other than cooperatives, who acquired the largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (c) one member selected from and representing the three handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (d) two members selected from and representing the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) two members selected from and representing all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. The 36 producer members shall be selected in the number and for the districts as designated in § 989.96 (Exhibit A). For each member of the board there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.27 *Eligibility.* No person shall be selected or continue to serve as a member or alternate member of the board, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided,* That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

§ 989.28 *Term of office*—(a) *Producer members.* One-third of the producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1950, and until the respective successors are selected and have qualified. One-third of the

producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1951, and until the respective successors are selected and have qualified. One-third of the producer members and producer alternate members of the board initially selected pursuant to § 989.30 by the Secretary shall hold office for a period beginning on a date to be designated by the Secretary and ending on April 30, 1952, and until the respective successors are selected and have qualified. The persons to hold office as producer members and producer alternate members for the respective terms of office specified above shall be determined by the drawing of lots by those persons selected by the Secretary as producer members and alternate members pursuant to § 989.30, and the results of such drawings shall be filed promptly with the Secretary. The term of office of succeeding producer members and producer alternate members of the board shall be three years, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

(b) *Handler and dehydrator members.* The handler members and dehydrator members, and their respective alternates, shall each serve for terms of one year, beginning on May 1, and ending on April 30 of the following year, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified: *Provided,* That the terms of office of the initial handler and dehydrator members and their respective alternates under this amended subpart shall begin on a date to be designated by the Secretary. Handler and dehydrator members, and their respective alternates, who are holding office on the effective date of this amended subpart shall continue to do so until the successors have been selected and have qualified.

§ 989.29 *Nominations*—(a) *Initial members.* Producer members and alternate producer members of the board serving on the effective date of this amended subpart shall continue to serve as the initial producer and alternate producer members of the board established by § 989.26, as amended, for their specified terms of office and until their respective successors have been selected and have qualified. Initial nominations for each of the handler and dehydrator members and alternate members of the board established by § 989.26, as amended, shall be filed with the Secretary not later than 10 calendar days after the effective date of this amended subpart.

(b) *Successor members.* Nominations for successor members and alternate members of the board shall be made as set forth in subparagraphs (1) to (6) of this paragraph.

(1) The board shall give reasonable publicity of a meeting or meetings of producers, handlers and dehydrators, respectively, for the purpose of making nominations for member and alternate member positions to be filled on the board: *Provided,* That, with respect to producer members and producer alternate members, a meeting or meetings shall be held in each respective district for which nominations are to be made to fill producer member and producer alternate member positions on the board.

(2) Only producers who produced raisin variety grapes during the then current crop year in the respective district for which nominations are to be made may nominate, or vote for, any producer member or producer alternate member for such district. Any producer who produced raisin variety grapes during the then current crop year in any of the districts may be nominated to represent any district as producer member or producer alternate member of the board, except that a producer may be a nominee from only one district. One or more eligible producers for each producer member position to be filled on the board may be proposed for nomination and one or more eligible producer for each alternate member position to be filled may be proposed for nomination. Each producer shall cast only one vote with respect to each position for which nomination is to be made. The person receiving a majority of votes with respect to each producer member or producer alternate member position shall be the person to be certified to the Secretary as the nominee for each such position. In the event no person receives a majority, there shall be a run-off vote between the two persons receiving the largest number of votes.

(3) Only handlers who packed or processed raisins during the then current crop year may nominate, or vote for, handler members or handler alternate members. One or more eligible handlers for each handler member position to be filled may be proposed for nomination, and one or more eligible handlers for each alternate member position to be filled on the board may be proposed for nomination. Nominations by each of the handler groups specified in § 989.26 shall be made by and from handlers, or employees, representatives, or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made: *Provided,* That only handlers coming within the particular group, as specified in § 989.26, for which nomination is to be made, shall vote. The person receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Only dehydrators who produced raisins by dehydrating raisin variety grapes during the then current crop year may nominate, or vote for, dehydrator members or dehydrator alternate members. One or more eligible dehydrators for each dehydrator member position to be filled on the board may be proposed for nomination, and one or more eligible dehydrators for each alternate member position may be proposed for nomination. Each dehydrator shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each dehydrator member or dehydrator alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(5) Each vote cast shall be on behalf of the person voting, his agents, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The result of each ballot at each such meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot, and at each meeting of handlers, and dehydrators, voting may be by secret ballot.

(6) Each such nomination shall be certified by the board to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

§ 989.30 *Selection.* The Secretary shall select producer, handler, and dehydrator members and alternate members in the numbers specified in § 989.26 and with the qualifications specified in § 989.27. Such selections may be made from the nominations certified pursuant to § 989.29 or from other producers, handlers, and dehydrators, but each such selection shall be made, on the basis of the respective producer, handler, and dehydrator representations and qualifications set forth in §§ 989.26 and 989.27.

§ 989.31 *Failure to nominate.* In the event nomination for a member or alternate member position on the board is not certified pursuant to and within the time specified in § 989.29, the Secretary may select such member or alternate member without regard to nomination, but such selection shall be on the basis of the respective producer, handler and dehydrator representations and qualifications set forth in §§ 989.26 and 989.27.

§ 989.32 *Acceptance.* Each person selected by the Secretary as a member or as an alternate member of the board shall, prior to serving on the board, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of his selection.

§ 989.33 *Alternate members.* The alternate for a member of the board shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ 989.34 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member, or as an alternate member of the board to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.29 and 989.30, insofar as such provisions are applicable. If nomination to fill any vacancy is not filed within 20 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomi-

nation, but on the basis of the applicable representation and qualifications set forth in §§ 989.26 and 989.27.

§ 989.35 *Meetings.* The board shall meet at the call of its chairman or its vice chairman when acting as chairman, or at the call of any officer of the board upon the request of at least one-third of its producer or handler members. Reasonable advance notice of each meeting shall be given by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable. The notice of each meeting shall specify the time, place, and general purpose thereof.

§ 989.36 *Duties.* The duties of the board shall consist of the conducting of meetings for the purpose of making nominations for membership on the board and the certifying of nominations made for such purpose to the Secretary, the making of nominations to the Secretary for member and alternate member positions on the committee, the making of recommendations to the committee with respect to marketing policy, the free, reserve, and surplus percentages, and such other operational matters as it deems proper or as the committee may request.

§ 989.37 *Procedure.* (a) Except as otherwise provided in § 989.42, all decisions of the board shall be by majority vote of the members present. The presence of not less than 19 producer members and not less than five members other than producer members shall be required to constitute a quorum.

(b) The board shall give to the Secretary the same notice of meetings of the board as it gives to its members.

RAISIN ADMINISTRATIVE COMMITTEE

§ 989.39 *Establishment and membership.* A Raisin Administrative Committee is hereby established to administer the terms and provisions of this part. Such committee shall consist of 14 members, of whom eight shall represent producers (one of whom shall be a producer of raisin variety grapes used in the production of Golden Seedless raisins) five shall represent handlers, and one shall represent dehydrators. Of the five handler members, one shall be selected from and represent each of the following divisions: (a) The handlers doing business as cooperative marketing associations, or cooperative organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) the two handlers, other than cooperatives, who acquired the largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (c) the three handlers, other than cooperatives, who acquired the next largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (d) the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. For each member of the committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.40 *Eligibility.* No person shall be selected, or continue to serve, as a member or alternate member of the committee, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided,* That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

§ 989.41 *Term of office.* Members and alternate members of the committee shall each serve for terms of one year, beginning on June 1, and ending on May 31 of the following year but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified: *Provided,* That the term of office of initial dehydrator and handler members and alternate members under this amended subpart shall begin on a date to be designated by the Secretary.

§ 989.42 *Nomination*—(a) *Producer members.* The producer members of the board, and producer alternate members when acting as members, shall nominate from among the producer members and producer alternate members of the board eight persons for producer member positions on the committee and an alternate for each such persons: *Provided,* That one of the persons nominated for a producer member position on the committee and his alternate shall be producers of raisin variety grapes used in the production of Golden Seedless raisins.

(b) *Handler members.* The handler members of the board and handler alternate members when acting as members, shall nominate from among the handler members and alternate members of the board, five persons for handler member positions on the committee, and an alternate for each such person: *Provided,* That such nominations shall be made on the basis of one member and one alternate member for each of the groups specified in § 989.39. Nomination for each of the handler groups specified in § 989.39 shall be made by and from handlers, employees, representatives or agents of handlers falling within each such group.

(c) *Dehydrator members.* The dehydrator members of the board, and dehydrator alternate members when acting as members, shall nominate from among the dehydrator members and dehydrator alternate members of the board one person for the dehydrator member position on the committee and an alternate for such person.

(d) *Initial members.* Nominations for initial handler and dehydrator members and alternate members of the committee as provided in § 989.39, as amended, shall be certified by the board to the Secretary not later than 10 calendar days after the selection by the Secretary of board members. The handler and dehydrator members and alternate members who are serving as such at the effective time of this amended subpart shall continue to serve until the successors have been selected and have qualified. The producer members and alternate members who are serving as such at the effective time of this subpart shall continue to serve for their specified terms of office and until their respective successors have been selected and have qualified.

(e) *Successor members.* Nominations for successor members and alternate members of the committee shall be certified by the board to the Secretary annually within 30 days following the selection by the Secretary of board members.

§ 989.43 *Selection.* The Secretary shall select producer, handler, and dehydrator members and alternate members of the committee in the numbers and with the qualifications specified in §§ 989.39 and 989.40. Such selections may be made by him from the nominations certified pursuant to § 989.42 or from other eligible producers, handlers, and dehydrators, but such selections shall be made on the basis of the respective producer, handler and dehydrator representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.44 *Failure to nominate.* In the event any of the groups entitled pursuant to § 989.42 to submit nominations to the Secretary shall fail to do so within the time specified in § 989.42, the Secretary may select the particular members or alternate members of the committee without regard to nominations, but such selections shall be on the basis of the applicable producer, handler and dehydrator representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.45 *Acceptance.* Each person selected by the Secretary as a member or as an alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of such selection.

§ 989.46 *Alternate members.* An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

§ 989.47 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.42 and 989.43, insofar as such provisions are applicable. If nomination to fill any such vacancy is not made within 20 calendar days after

such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, but on the basis of the applicable representations and qualifications set forth in §§ 989.39 and 989.40.

§ 989.48 *Compensation and expenses.* The members of the committee and the board, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee.

§ 989.49 *Powers.* The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary, complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 989.50 *Duties.* The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, packer, dehydrator, or processor;

(b) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and market conditions with respect to raisins;

(d) To submit to the Secretary such available information with respect to raisins and raisin variety grapes as he may request, and such other information as the committee may deem desirable and pertinent;

(e) To select, from among its members, a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by certified public accountants at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and the report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit shall be submitted to the Secretary;

(h) To prepare quarterly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by producers, handlers and dehydrators;

(i) To give reasonable advance notice of the times, places, and purposes of its meetings by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable.

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this part; and

(k) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

§ 989.51 *Obligation.* Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

§ 989.52 *Procedure.* (a) All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present and a quorum must be present. All votes in an assembled meeting shall be cast in person. The presence of nine members shall be required to constitute a quorum. The committee may vote by mail or telegraph, but any proposition to be so voted upon first shall be explained accurately, fully and identically by mail or telegraph to all members. Fourteen concurring votes shall be required to reach a decision on a mail or telegraphic vote.

(b) The committee shall give to the Secretary the same notice of its meetings as it gives to its members and also advance notice of all subcommittee meetings.

(c) The committee shall defer action with respect to any marketing policy or percentage recommendation of the board until at least the day following the day on which any such recommendation is adopted by the board.

RESEARCH AND DEVELOPMENT

§ 989.53 *Research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of raisins. The expense of such projects shall be paid from funds collected pursuant to § 989.79.

MARKETING POLICY

§ 989.54 *Marketing policy.* Not later than August 20 preceding the beginning of each crop year, the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the ensuing crop year and shall submit to the Secretary within 10 days a report setting forth its marketing policy for the regulation of the handling of raisins in such crop year. Such report shall include the data and information used by the committee in formulating such marketing policy and the recommendations of the board: *Provided,* That with respect to the initial crop year the committee shall hold a meeting for such purpose as soon as practicable after the effective date of this amended subpart. In developing the marketing policy, the committee shall give consideration to the following factors with respect to each varietal type of raisins:

(a) The estimated tonnage of raisins held by producers and handlers;

(b) The estimated tonnage of raisins which will be produced during the crop year;

(c) An appraisal of the quality of raisins of the crop to be produced in such crop year, including the estimated tonnage of standard raisins and off-grade raisins, respectively;

(d) The tonnage of raisins marketed during recent crop years in the domestic market and in Canada;

(e) The tonnage of raisins marketed in recent crop years in foreign markets, segregated to show the quantities marketed from free and surplus tonnage raisins and the countries in which such raisins were marketed;

(f) The current price being received for raisins by producers and handlers;

(g) The estimated trade demand during the crop year for raisins in normal market channels both domestic and foreign;

(h) The trend and level of consumer income in the domestic market;

(i) The estimated probable market requirements for raisins during the crop year in foreign markets segregated by countries or groups of countries;

(j) Such factors, if any, which, in the supplying of foreign markets, may tend to directly affect or burden the normal domestic market;

(k) Any other pertinent factors bearing on the marketing of raisins; and

(l) The conditions, including pricing formula, for the sale of surplus tonnage raisins in foreign markets pursuant to the provisions of § 989.68.

§ 989.55 *Modification.* In the event the committee subsequently deems it advisable to modify such marketing policy, because of changed demand or supply conditions, it should hold a meeting for that purpose, and file a report thereof with the Secretary within five days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show each modification, the bases therefor, as well as the recommendation of the board.

§ 989.56 *Verbatim record.* The committee shall file with its report to the Secretary a verbatim record of that portion of its meeting or meetings relating to its marketing policy.

§ 989.57 *Publicity and notice.* The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of each meeting to consider a marketing policy or any modifications

thereof, and each such meeting shall be open to them. Similar notice shall be given to producers, dehydrators, and handlers of each marketing policy report, or modification thereof, filed with the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be made available for examination by any producer, dehydrator, or handler.

GRADE AND CONDITION STANDARDS

§ 989.58 *Natural condition raisins*—(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet the minimum grade and condition standards as set forth in § 989.97 (Exhibit B) or as later modified; *Provided,* That any handler may acquire storable off-grade raisins for the account of the committee, may receive raisins for inspection, and may receive storable or non-storable off-grade raisins for reconditioning: *And provided further* That a handler who is a processor may acquire storable or non-storable off-grade raisins for use in distillation, animal feed, or any outlet other than for human consumption. All storable off-grade raisins acquired by a handler for the account of the committee shall be held separate and apart from any other raisins held by him, shall not be held for the account of anyone but the committee, and shall be identified as storable off-grade raisins.

(b) *Modification of minimum grade and condition standards for natural condition raisins.* The committee may recommend to the Secretary modifications of the minimum grade and condition standards for natural condition raisins of any varietal type, as set forth in § 989.97 (Exhibit B) and shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue such modification of the minimum grade and condition standards for natural condition raisins if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of each such regulation shall be given to all handlers by registered mail.

(d) *Inspection and certification.* Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to an inter-plant or inter-handler transfer as described in § 989.59 (e) The cost of all such inspection shall be borne initially by the handler but he shall be reimbursed by the committee for inspection costs applicable to pool tonnage held for the account of the committee. Prior to acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certificate showing whether or not the raisins meet the applicable minimum grade and condition standards. The handler shall submit or cause to be submitted to the committee a copy of such certificate, together with such other documents or records as the committee may require. Such certificate shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(e) *Options as to off-grade natural condition raisins.* Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade standards may at the option of either the handler or the person making the tender: (1) Be returned to the person tendering the raisins; (2) if storable, be turned over to the handler to be held by him as off-grade natural condition raisins for the account of the committee; or (3) be turned over to the handler for reconditioning under the terms of a written agreement between the person making the tender and the handler. If the handler is to acquire such raisins after they are reconditioned, his obligations with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned. If after such reconditioning, such raisins meet the minimum grade standards but are no longer natural condition raisins, any handler who acquires such raisins shall meet his surplus and reserve tonnage obligations from natural condition raisins acquired by him. Any off-grade raisins (including stemmer waste and raisin offal) accumulated by a handler in reconditioning raisins shall, depending on the terms of the written agreement, be returned by the handler to the person making the tender, or be disposed of by the handler pursuant to § 989.59 (f) Each lot of raisins received by a handler for reconditioning shall be kept by him separate and apart from all other raisins, including other lots received by him for reconditioning, until the quality of the raisins is established by inspection and certification after the raisins have been reconditioned.

§ 989.59 *Regulation of the handling of raisins subsequent to their acquisition by handlers*—(a) *Regulation.* Unless otherwise provided herein, no handler shall: (1) Ship or otherwise make final disposition of natural condition raisins unless they meet the effective applicable minimum grade and condition standards for natural condition raisins; or (2) ship or otherwise make final disposition of packed raisins unless they at least meet the following minimum grade standards or such standards as modified pursuant to the provisions of paragraph (b) of this section: (i) With respect to all raisins except Layer Muscats and Zante Currants, "U. S. Grade C" as defined in effective United States Standards for Grades of Processed Raisins; (ii) with respect to Golden Seedless and Sulfur Bleached Raisins, the color requirements for "bleached color" (or "choice color") as defined in the said standards; (iii) with respect to Layer Muscat raisins, "U. S. Grade B" as defined in the said standards; and (iv) with respect to Zante Currant raisins, "U. S. Grade B" as defined in the effective United States Standards for Grades of Dried Currants.

(b) *Minimum grade standards for packed raisins.* The committee may recommend to the Secretary modifications of the minimum grade standards for packed raisins of any varietal type as prescribed in paragraph (a) of this section, and shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue such modification if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of each such regulation shall be given to all handlers by registered mail.

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer raisins from his plant to his own or another handler's plant within the State of California without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall submit promptly

to the committee a report of such transfer. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(f) *Off-grade raisins accumulated by handlers.* Any off-grade raisins (including stemmer waste and raisin offal) which may be received by a processor or accumulated by a handler by removing them from his standard raisins, and any raisins acquired as standard raisins by a handler which do not meet the applicable grade and condition standards for shipment or final disposition as raisins, shall be disposed of or marketed, without further inspection, for distillation, animal feed, or uses other than for human consumption. The committee shall establish with the approval of the Secretary, such rules and procedures as may be necessary to insure such uses.

(g) *Exemption of gift and specialty packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of gift and specialty packs of raisins from the grade, inspection, and certification requirements of this section.

§ 989.60 *Pooling and disposition of storable off-grade raisins held for the account of the committee.* Except as provided in § 989.62, a separate pool shall be established for storable off-grade raisins held by handlers for the account of the committee. Such raisins shall be disposed of or marketed for distillation, animal feed, or uses other than for human consumption. The committee shall establish, with the approval of the Secretary, such rules and procedures as are necessary for the administration of the pool. These rules and procedures shall include provisions dealing with handlers' obligations and responsibilities, payments to handlers for performing pooling functions, and distribution of net proceeds to equity holders in a manner similar to those comparable provisions dealing with surplus tonnage raisins.

§ 989.61 *Exemption.* Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade or surplus pool raisins, free from any or all regulations, for uses in distillation, animal feed, or any use other than for human consumption.

§ 989.62 *Above parity situations.* The provisions hereof relating to minimum grade and condition standards and inspection requirements, within the meaning of section 2 (3) of the act, and any other provisions pertaining to the administration and enforcement thereof, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2 (1) of the act. Any off-grade raisins received by a handler during a period when minimum grade standards are in effect and when the season average price to producers for raisins, as estimated by the Secretary is in excess of the parity level shall be disposed of by such handler pursuant to the provisions of § 989.59 (f), rather than through the off-grade pool.

VOLUME REGULATION

§ 989.63 *Recommendations for designation of percentages.* (a) If the committee concludes that the supply and demand conditions for raisins make it advisable to designate the percentages of standard raisins acquired by handlers in any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, it shall recommend such percentages to the Secretary. The committee may recommend such percentages separately for each varietal type. The committee also shall submit, together with any recommendation with respect to percentages, the information on the basis of which such recommendation was made, and the recommendations of the board, and also shall specify for each varietal type of raisins the outlets which were considered in determining the free and surplus tonnages and the free and surplus percentages. In the event the committee subsequently deems it desirable to modify, suspend, or terminate any designation by the Secretary of such percentages, it shall submit to the Secretary its recommendation in that regard along with the information on the basis of which such modification, suspension, or termination is recommended, and the recommendation of the board. The committee shall file with its recommendation to the Secretary, a verbatim record of that portion of its meeting or meetings, relating to the free, reserve, and surplus percentages. The recommendations of the committee for the fixing of the initial free, reserve, and surplus percentages for any crop year shall be made not later than October 1 of such year.

(b) In determining any recommendation referred to in paragraph (a) of this section, the committee shall consider and analyze with respect to each varietal type of raisins the same pertinent factors as set forth in § 989.54 of the revised order, relating to marketing policy.

(c) The committee shall give prompt and reasonable publicity to producers, dehydrators and handlers of each meeting to consider the recommendation of the percentages to be fixed pursuant to § 989.64 or of any recommendation to modify, suspend or terminate such percentages and each such meeting shall be open to them. The committee shall also give similar notice to producers, dehydrators and handlers, of all such recommendations submitted to the Secretary.

§ 989.64 *Regulation by the Secretary.* (a) Whenever the Secretary finds from the recommendation and supporting information supplied by the committee, or from any other available information, that to designate the percentages of standard raisins acquired by handlers during any crop year which shall be free tonnage, reserve tonnage and surplus tonnage, respectively, would tend to effectuate the declared policy of the act, he shall so designate the percentages of standard raisins acquired by handlers during such crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively. In the event the Secretary subsequently finds from the recommendations and supporting information supplied by the committee, or from any other available information, that modification, suspension, or termination of any such designation will tend to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such designation. No such modification shall decrease the free percentage initially designated by the Secretary.

(b) The Secretary may designate separately for each varietal type of standard raisins acquired by handlers in any crop year, the percentages which shall be considered as free tonnage, reserve tonnage, and surplus tonnage, respectively.

(c) The Secretary shall notify the committee promptly of each such percentage so fixed. The committee shall give prompt and reasonable publicity thereof to producers and shall notify handlers and dehydrators of such percentages by registered mail.

§ 989.65 *Free tonnage.* The standard raisins acquired by a handler which are designated as free tonnage may be disposed of by him in any marketing channel, subject to the applicable provisions of this amended subpart.

§ 989.66 *Reserve and surplus tonnage generally.* (a) The standard raisins acquired by a handler which are designated as reserve tonnage and those which are designated as surplus tonnage shall be held by him for the account of the committee and subject to the applicable restrictions of this part.

(b) (1) Each handler shall hold in storage all reserve and surplus tonnage acquired by him until he has been relieved of such responsibility by the committee, either by delivery to the committee, or otherwise. Such handler shall store such reserve and surplus tonnage raisins in natural condition without addition of moisture and in such a manner as will maintain the raisins in the same condition as when he acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God, force majeure, or other conditions beyond the handler's control: *Provided,* That, in the case of Layer Muscat raisins, the committee may permit handlers to satisfy the applicable reserve and surplus tonnage obligations with residual Muscat raisins obtained by them in layering operations subject to such safeguards as it may prescribe.

(2) Reserve, surplus and off-grade raisins acquired or held by each handler shall be stored separate and apart from other raisins and from each other to such extent, and identified in such manner, as the committee may specify by its rules and procedures as approved by the Secretary.

(3) Each handler may, under the direction and supervision of the committee, substitute for any quantity of reserve tonnage or surplus tonnage raisins a like quantity of free tonnage raisins of like quality and varietal type and of the same or more recent year's production. Each such handler shall give the committee reasonable advance

notice of his intention to substitute, the exact location of the raisins for which substitution is to be made, and arrange with the committee a mutually satisfactory time for the substitution.

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to any one designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage or surplus tonnage raisins held by him. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

(c) Each handler shall, at all times, hold in his possession or under his control reserve and surplus tonnage referable to his acquisitions of standard raisins, less any quantity of such reserve or surplus tonnage delivered by him pursuant to instructions of the committee and any quantity of such tonnage sold to him by the committee: *Provided*, That the committee shall defer, upon the written request of any handler and for good and sufficient cause, the meeting by such handler of such requirement for a specified period ending not later than November 15 of the particular crop year. As a condition to the granting of any such deferment, the committee shall require the handler to obtain and file with it a written undertaking that by the end of the deferment period he will have fully satisfied his obligation with respect to the holding or control by him of the reserve or surplus tonnages applicable to his acquisitions of raisins. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee, with surety or sureties satisfactory to the committee, running in favor of the committee and the Secretary, and for an amount computed on the basis of the then current market value of the raisins in the quantity for which the deferment is granted. The cost of such bond shall be borne by the handler. Any sums collected through default of a handler on his bond shall, after reimbursement of the committee for any expenses incurred by it in effecting collection, be deposited with the funds obtained by it from the disposition of the reserve or surplus pools as applicable and disbursed to producers as set forth in paragraph (g) of this section. In addition to the foregoing, the committee may establish other reasonable and necessary terms and conditions upon which such deferments may be granted.

(d) Reserve tonnage and surplus tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins or packed raisins shall meet the applicable minimum grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve and surplus pool tonnage raisins as it may deem necessary.

(e) (1) In the event the committee offers to handlers reserve tonnage raisins for purchase as provided in § 989.67, or surplus tonnage raisins for contract packing or for sale in export as provided in § 989.68, each such handler shall be given the opportunity to purchase his share of each offer. Each share of an offer or reoffer under such an offer shall be determined in accordance with the appropriate provisions of subparagraphs (2), (3) or (4) of this paragraph, unless the committee determines and prescribes that any such share shall be in accordance with any modified procedure established pursuant to subparagraph (5) of this paragraph.

(2) Each handler's share of an offer of reserve tonnage raisins for purchase shall be determined as the same proportion that the reserve tonnage held by him is of the reserve tonnage held by all handlers: *Provided*, That any reserve tonnage for which a deferment has been granted to a handler pursuant to the provisions of paragraph (c) of this section shall be included in his holdings in determining his share. In the event that any handler fails to purchase any or all of his share of any such offer, the remaining portion of the offer shall be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective volumes purchased in the current and all prior offers and reoffers. Any handler whose holdings of reserve tonnage raisins have been exhausted may participate in any reoffer in proportion to the volume purchased by him in the current and all prior offers and reoffers. If the committee determines an offer to be the last which will be made prior to July 1 of each crop year, each handler entitled to participate in any reoffer made in connection therewith, shall be eligible to purchase an equal share of the tonnage reoffered, and as many reoffers of unpurchased tonnage as the committee deems advisable may be made.

(3) Each packer's share of an offer of surplus tonnage raisins for contract packing shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all packers. In the event that any packer fails to contract for packing any or all of his share of any offer, the remaining portion thereof shall be reoffered by the committee to all packers who contracted for packing all of their respective shares, in proportion to their respective acquisitions: *Provided*, That, if such amount which packers fail to contract for packing does not exceed 250 tons, or if it is necessary to deviate from the foregoing in order to meet terms and conditions of shipment, the committee may, in its discretion, allocate such surplus tonnage raisins among packers as it deems appropriate, but the shares of packers in subsequent offers or reoffers shall be adjusted accordingly.

(4) Each handler's share of an offer of surplus tonnage raisins for sale in export shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all handlers. If, prior to the close of any offer of surplus tonnage raisins for export, a handler has purchased his entire share of such offer and makes application to the committee for additional surplus tonnage raisins for sale in export, the committee shall allocate to such handler surplus tonnage raisins held by him. In the event that a handler wishes to purchase surplus tonnage raisins for export and no longer holds any surplus tonnage raisins for the account of the committees, the committee shall withdraw surplus tonnage raisins from other handlers and deliver them to the handler applying to the committee for the purchase of additional surplus tonnage raisins for sale in export. In making such allocation, the committee shall, insofar as is practicable, first withdraw such surplus tonnage raisins from those handlers who have purchased for sale in export the smallest percentage of the surplus tonnage raisins acquired by them, or who for other reasons are holding the largest percentage of their acquisitions of surplus tonnage. The cost of transporting any such surplus tonnage raisins from one handler to another shall be paid by the committee from surplus pool funds.

(5) In the event the committee determines that the applicable procedures, as specified in subparagraphs (2), (3), or (4) of this paragraph, will not provide an allocation for handlers which is suitable for a particular situation, the committee, with the prior approval of the Secretary, may establish such modifications of such applicable procedures, consistent with the provisions of subparagraph (1) of this paragraph, as will facilitate the disposition of reserve and surplus tonnages through handlers.

(f) Handlers shall be compensated for receiving, storing, handling, and inspection of reserve and surplus tonnage raisins held by them for the account of the committee, in accordance with a schedule of payments established by the committee and approved by the Secretary. A box rental shall be paid by the committee to producers or handlers for boxes used in storing reserve or surplus tonnage raisins beyond the crop year of acquisition in accordance with a rental schedule established by the committee and approved by the Secretary. Any handler may request the committee at any time, by registered mail, to remove all surplus tonnage raisins held for the account of the committee and remaining in his possession from any previous crop year, and at any time after August 1 of any crop year may request removal of all surplus tonnage raisins remaining in his possession from the current crop year, and may request that the committee provide the necessary containers for such removal. In this event, the committee shall make the removal within 30 days after the receipt of the request, supplying the necessary containers if so requested. If any handler makes such a request, the committee shall immediately give notice thereof to the Secretary.

(g) The committee shall have the authority, in its discretion, to obtain loans, nonrecourse or otherwise, on any part or all of the reserve tonnage or surplus tonnage, or both, and to pledge or hypothecate the raisins on which such loans are obtained as security therefor: *Provided*, That, in every such case, there shall be included in the loan agreement

a provision to the effect that, in case the lender obtains possession or control of such raisins, he will dispose of them in such a manner as will not tend to defeat the objectives of this amended subpart. The net proceeds of any such loan shall be distributed by the committee to the respective producers, or their successors in interest, on the basis of the volume of their respective contributions to the pooled raisins of each varietal type on which the loan is obtained. The net proceeds from the disposition of reserve and surplus tonnages of raisins of each varietal type shall be distributed by the committee to the respective producers, or their successors in interest thereto, on the basis of the volume of their respective contributions to the reserve and surplus tonnages of such varietal type. Distribution of the proceeds in connection with the reserve and surplus tonnages contributed by a nonprofit cooperative marketing association which has authority to market the raisins of its members and to allocate the proceeds therefrom to such members shall be made to such association. Advance or progress payments may be made by the committee, in conformity with the provisions of this paragraph, as sufficient funds become available.

(h) The committee may establish, from time to time, with the approval of the Secretary, additional procedures, not inconsistent with the provisions of this amended subpart, which are deemed necessary to effectuate the provisions of this section, and §§ 989.67, 989.68, 989.69 and 989.70.

§ 989.67 *Special provisions relating to reserve tonnage.* (a) The committee may sell reserve tonnage of any varietal type to handlers so as to provide them with the quantity which is needed to meet the free tonnage commercial trade requirements for that varietal type in the event that such requirements cannot be filled by the total free tonnage of that varietal type: *Provided,* That no such sale of natural (sun-dried) Thompson Seedless raisins shall be made prior to December 1 of the particular crop year. Any such quantities made available for such sale to handlers shall be offered to them pro rata as required by the provisions of § 989.66 (e)

(b) Reserve tonnage of any varietal type shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs incurred by the committee on account of the receiving, inspecting, storing, insuring and holding of said raisins: *Provided,* That where the outlook for the next crop or other factors have caused a downward trend in the price received by producers for free tonnage, reserve tonnage may be sold to handlers at the current field price, as determined by the committee. The committee shall file with the Secretary, five days (exclusive of Saturdays, Sundays and holidays) prior to making any offer to sell reserve tonnage raisins, information relating to the quantity of raisins to be offered and the price or prices at which such raisins are to be offered. The Secretary shall have the right to disapprove the making of such an offer or any price at which reserve tonnage raisins may be offered for sale.

(c) Reserve tonnage held unsold by the committee on July 1, shall on July 1, and any reserve tonnage acquired between July 1 and the end of the crop year shall, at the time of acquisition, become surplus tonnage for all purposes and subject to the provisions of this amended part relating to surplus tonnage. If the committee finds within a crop year that the current holdings of surplus tonnage are insufficient to meet the current demand therefor and that it would be inappropriate to change the volume percentages, it may temporarily borrow, with the prior approval of the Secretary, sufficient reserve tonnage for disposition in the surplus outlets with provision for subsequent replacement from the surplus tonnage.

(d) If the committee finds that because of national emergency, crop failure or other major change in economic conditions, a shortage of raisins has developed or is likely to develop, it may waive for any crop year, with the prior approval of the Secretary, the time limitations of paragraph (c) of this section.

§ 989.68 *Disposal of surplus raisins.* (a) The committee shall dispose of all surplus tonnage raisins in such a manner as to achieve, as nearly as may be practicable, complete disposal of such raisins by August 31 of the crop year. Any surplus tonnage raisins held unsold by the committee on October 15 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of surplus tonnage raisins in export: *Provided,* That, whenever the Secretary approves a finding by the committee or finds on the basis of information otherwise available to him, that, because of national emergency, crop failure, or other major change in economic conditions, retention of the surplus raisins carried over is warranted, the foregoing requirement as to disposal shall not apply and the committee may then sell any of such surplus tonnage raisins as though they were reserve tonnage raisins.

(b) Surplus tonnage raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified surplus outlets or for resale to exporters for sale in such outlets; (2) by direct sale to any agency of the United States Government for non-competitive use; (3) by direct sale to foreign government agencies or foreign importers in any country not listed pursuant to paragraph (c) of this section or where the procurement of raisins is so regulated as to preclude purchases from domestic handlers; (4) by gift; and (5) by any other means consistent with the provisions of this section, and in outlets non-competitive with those for free tonnage raisins.

(c) The committee shall sell surplus raisins to handlers for export sale to listed countries. The Secretary shall establish, on the basis of the recommendation of the committee or from other available information, a list specifying the countries to which sale in export of surplus tonnage raisins may be made by or through handlers. The recommended list shall be submitted by the committee to the Secretary at the time it submits its recommendation as to volume percentages, and in recommending such list the committee shall give consideration to the pertinent factors enumerated in § 989.54. The list shall not be changed except upon approval by the Secretary of a recommendation by the committee subsequent to its review of such pertinent factors. No country may be removed from the list unless a finding is made by the committee that such removal and subsequent direct sale by the committee will not lead to disruption of sales of surplus tonnage raisins by handlers in other countries on the list and a further finding that, although handlers have been able to offer surplus tonnage raisins at competitive prices to the country to be removed, there remains an unfulfilled demand in such country which has not been supplied by handlers and which could be supplied by the committee at the same prices by means of direct sale. No country may be added to the list unless a finding is made by the committee that such addition represents a practical means of making sales of surplus raisins to such country.

(d) Surplus tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve complete disposition of such raisins by August 31 of the crop year. No offer to sell surplus raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays and holidays) have elapsed from the time it files with the Secretary information as to the quantity and varietal type of raisins to be offered and the prices at which they are to be offered, and no such offer shall be made if the Secretary disapproves thereof.

(e) The committee may sell surplus raisins as provided in paragraph (b) (3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell surplus raisins to foreign government agencies or foreign importers in any country removed from such list but no such sale shall be entered into by the committee until five days (exclusive of Saturdays, Sundays and holidays) have elapsed from the time it files with the Secretary information as to the quantity, price, and foreign country involved in such sale, and no such sale shall be made if the Secretary disapproves thereof.

(f) The committee may undertake market development projects to promote the consumption of surplus tonnage raisins in existing export outlets or in new export outlets.

(g) The committee may, with the approval of the Secretary, refuse to sell surplus tonnage raisins for export to any handler who is in default on any previous purchase of such raisins from the committee or if the committee finds that such handler is currently not in compliance with the provisions of a sales agreement covering surplus tonnage raisins executed by such handler with the committee.

(h) The committee shall prescribe, with the approval of the Secretary, such rules and procedures as are necessary for carrying out the provisions of this section.

§ 989.69 *Substitution for Layer Muscats.* A handler may substitute an equal quantity of natural (sun-dried) Muscat or Valencia raisins for any portion or all of the reserve and surplus tonnage referable to his acquisitions of Layer Muscat raisins: *Provided,* That he shall have made arrangements satisfactory to each producer of the Layer Muscat raisins for such substitution. The handler shall report promptly to the committee any such substitution.

§ 989.70 *Storage of raisins held on memorandum receipt and of packer-owned tonnage.* All raisins stored by a handler for another person on memorandum or warehouse receipt, or raisins produced and stored by a handler, shall be stored separate and apart from other raisins and shall be clearly marked or tagged as raisins stored on memorandum or warehouse receipt or as raisins produced by the handler but not acquired by him in his capacity as a handler.

REPORTS AND RECORDS

§ 989.73 *Reports*—(a) *Inventory reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any raisins which were held by him on a date designated by the committee, which information as specified may include, but not be limited to: (1) The quantity of any raisins so held, segregated as to varietal type, natural condition, packed, standard quality or off-grade quality and (2) the locations of the raisins.

(b) *Acquisition reports.* Each handler shall file with the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to: (1) The total quantity acquired; (2) the quantity of off-grade raisins acquired as such for the account of the committee, and the reserve and surplus tonnages, separately, referable to his acquisitions of standard raisins; (3) the locations of such reserve, surplus and off-grade tonnages; and (4) cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. In the case of a weekly report, it shall be filed not later than Wednesday of the week following the week which is covered by such report, and reports for any other period shall be filed as required by the committee. Upon written application made to the committee, a handler may be relieved of filing such reports upon completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

(c) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this amended part.

§ 989.75 *Confidential information.* All reports and records furnished or submitted by a handler to the committee shall be received by, and at all times kept under the custody or control of, one or more employees of the committee, who shall disclose to no person, except the Secretary upon request therefor or to the committee in connection with its investigations of alleged violations, data or information obtained or extracted therefrom which would constitute a trade secret or the disclosure of which might affect the trade position, financial condition, or business operations of the particular handler from whom received: *Provided,* That the committee may require such an employee to disclose to it, or to any person designated by it or by the Secretary, information and data of a general nature, compilations of data affecting handlers as a group, and any data affecting one or more handlers, so long as to identity of the individual handlers involved is not disclosed.

§ 989.76 *Records.* Each handler shall maintain such records of all raisins acquired by him as prescribed by the committee. Such records shall include, but not be limited to, the quantity of raisins of each varietal type acquired from each person and the name and address of each such person, total acquisitions, total sales, and total other disposition of each varietal type which he handles, and each handler shall maintain such records for at least two years after the termination of the crop year in which the transactions occurred.

§ 989.77 *Verification of reports.* For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any raisins held by such handler, and any and all records of the handler with respect to the holding or disposition of raisins by him. Each handler shall furnish all labor and equipment necessary to make such inspections. Each handler shall store raisins in a manner which will facilitate inspection, and shall maintain storage records which will permit accurate identification of raisins held by him or theretofore disposed of. Insofar as is practicable and consistent with the carrying out of the provisions of this amended subpart, all data and information obtained or received through checking and verification of reports shall be treated as confidential information.

EXPENSES AND ASSESSMENTS

§ 989.79 *Expenses.* The committee is authorized to incur such expenses (other than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and the board. The funds to cover such expenses shall be obtained by levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year and not later than October 1 thereof, a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Also, it shall file at the same time a proposed budget of the expenses likely to be incurred during the crop year in connection with reserve, surplus, or off-grade raisins held for the account of the committee, exclusive of the receiving, storing, and handling expenses which are covered by a schedule of payments to handlers effective pursuant to § 989.66 (f) or any rules and procedures established by the committee, and exclusive of any expenses it may incur in connection with the disposition of such raisins and which are unknown at the time. The said report shall also cover this proposed budget.

§ 989.80 *Assessments.* Each handler shall, with respect to all free tonnage acquired by him, and all reserve tonnage sold to him pursuant to § 989.67, pay to the committee, upon demand, his pro rata share of the expenses (exclusive of expenses for receiving, handling, holding, or disposing of any quantity of reserve and surplus tonnage and natural condition off-grade raisins held for the account of the committee) which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the total free tonnage acquired by such handler, plus all reserve tonnage sold to him for use as free tonnage during the applicable crop year and the total free tonnage acquired by all handlers, plus all reserve tonnage sold to all handlers for use as free tonnage during the same crop year. The Secretary shall fix the rate of assessment to be paid by such handler on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to apply to all free tonnage acquired, plus all reserve tonnage sold to handlers as free tonnage, during such crop year to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee and the board, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler during the crop year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 989.81 *Accounting.* (a) If, at the end of the crop year, the assessments collected for such crop year exceed the expenses incurred with respect to such crop year, each handler's share of such excess shall be credited to him against, and may be used for, the operations of the following crop year, unless such handler demands payment thereof, in which case his share shall be paid to him.

(b) The committee may, with the approval of the Secretary maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's prorata share of the expenses.

§ 989.82 *Expenses of reserve, surplus, and off-grade raisin operations.* The committee is authorized to incur such expenses as are reasonable and are necessary in discharging its obligations, pursuant to this part with respect to the receiving, handling, holding, or disposing of any quantity of reserve, surplus or off-grade raisins held for the account of the committee. The committee is authorized to pay any taxes assessed against raisins held by or for the account of the committee on the first Monday in March, in the reserve, surplus, or off-grade pools established pursuant to this part: *Provided,* That any equity holder may pay his own taxes upon giving notice to the committee on or before May 1 of each year of his intention to do so. All pool expenses shall be deducted from the proceeds obtained by the committee from the sale or other disposal of such reserve, surplus or off-grade raisins held for the account of the committee.

§ 989.83 *Funds.* All funds received by the committee pursuant to the provisions of this part, shall be used solely for the purposes authorized, and shall be accounted for in the manner provided, in this part. The Secretary may, at any time, require the committee and its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 989.84 *Disposition limitation.* No handler shall dispose of any free, reserve, surplus tonnage raisins, or off-grade raisins except in accordance with the provisions of this subpart or pursuant to regulations and instructions issued by the committee.

§ 989.85 *Personal liability.* No member or alternate member of the committee or any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

§ 989.86 *Separability.* If any provision of this amended subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this amended subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 989.87 *Derogation.* Nothing contained in this amended subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 989.88 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this amended subpart shall cease upon the termination of this amended subpart, except with respect to acts done under and during the existence of this subpart.

§ 989.89 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this amended subpart.

§ 989.90 *Effective time.* The provisions of this amended subpart, as well as any amendments to this amended subpart shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 989.91.

§ 989.91 *Suspension or termination.* (a) The Secretary may, at any time, terminate the provisions of this amended subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this amended subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this amended subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of raisin variety grapes, who during a representative period determined by the Secretary, have been engaged in the production for market of raisin variety grapes in the State of California: *Provided,* That such majority have, during such representative period, produced for market more than 50 percent of the volume of such raisin variety grapes produced for market within said State; but such termination shall be effective only if announced on or before August 31 of the then current crop year.

(d) The provisions of this amended subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 989.92 *Proceedings after termination.* (a) Upon the termination of the provisions of this amended subpart, the members of the committee then functioning shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 989.93 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this amended subpart or any regulation issued pursuant to this amended subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this amended subpart or any regulation issued under this amended subpart, (b) release or extinguish any violation of this amended subpart, or of any regulation issued under this amended subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 989.94 *Amendments.* Amendments to this amended subpart may be proposed from time to time, by any person or by the committee.

§ 989.96 *Exhibit A, producer members of the Raisin Advisory Board.* (a) One member for each of the following districts in Fresno County:

CLOVIS—DISTRICT NO. 1

All of T. 12 S., R. 20 E. in said county; all of T. 11 S., R. 20 E. in said county; all of T. 11 S., R. 21 E. in said county; all of T. 12 S., R. 21 E.; all of T. 12 S., R. 22 E.; Secs. 1, 2, 11, 12, 13, and 14 of T. 13 S., R. 20 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 of T. 13 S., R. 21 E., and Secs. 4, 5, 6, 7, 8, 9, 18, 19, 30, and 31 of T. 13 S., R. 22 E.

KERMAN—DISTRICT NO. 2

All of T. 13 S., R. 14 E. in said county; all of T. 13 S., R. 15 E. in said county; all of T. 13 S., R. 16 E. in said county; all of T. 13 S., R. 17 E. in said county; Secs. 30 and 31 of T. 13 S., R. 18 E.; all of T. 14 S., R. 14 E.; all of T. 14 S., R. 15 E., all of T. 14 S., R. 16 E., all of T. 14 S., R. 17 E.; all of T. 14 S., R. 18 E., the west two-thirds of T. 14 S., R. 19 E.; all of T. 15 S., R. 14 E.; all of T. 15 S., R. 15 E.; all of T. 15 S., R. 16 E., all of T. 15 S., R. 17 E., and all of T. 15 S., R. 18 E.

BIOLA—DISTRICT NO. 3

All of T. 13 S., R. 18 E. in said county, except Secs. 30 and 31; all of T. 12 S., R. 19

E. in said county; and all of T. 13 S., R. 19 E., except Secs. 25, 26, 27, 28, 33, 34, 35, and 36.

FRESNO—DISTRICT NO. 4

Secs. 25, 26, 27, 28, 33, 34, 35, and 36, T. 13 S., R. 19 E., all of T. 13 S., R. 20 E., except Secs. 1, 2, 11, 12, 13, and 14; Secs. 19, 20, 29, 30, 31, and 32 of T. 13 S., R. 21 E., the east one-third of T. 14 S., R. 19 E.; all of T. 14 S., R. 20 E.; and Secs. 5, 6, and 7 of T. 14 S., R. 21 E.

SANGER—DISTRICT NO. 5

The east one-half and Secs. 16, 17, 20, 21, 28, 29, 32, and 33, T. 13 S., R. 22 E.; all of T. 13 S., R. 23 E. lying north and west of the east channel of Kings River; all of T. 14 S., R. 23 E.; lying west of the east channel of Kings River; and Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, and 36, T. 14 S., R. 22 E.; all of Secs. 5 and 6, T. 15 S., R. 23 E., lying north of Kings River.

LONE STAR—DISTRICT NO. 6

All of T. 14 S., R. 21 E., except Secs. 5, 6, 7, and 36.

EASTON-OLEANDER—DISTRICT NO. 7

The north one-half of T. 15 S., R. 19 E.; the north two-thirds of T. 15 S., R. 20 E., except Sec. 19; and Secs. 6, 7, 18, and 19, T. 15 S., R. 21 E.

FOWLER—DISTRICT NO. 8

The south one-half of Sec. 1, and Secs. 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 33, T. 15 S., R. 21 E.; and Sec. 18, T. 15 S., R. 22 E.

DEL REY—DISTRICT NO. 9

Secs. 29, 30, 31, 32, 33, and 34, T. 14 S., R. 22 E.; Sec. 36, T. 14 S., R. 21 E., the north one-half of Sec. 1, T. 15 S., R. 21 E.; and Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, and 17, T. 15 S., R. 22 E.

PARLIER—DISTRICT NO. 10

All of Secs. 4, 9, 16, and 21 lying west of Kings River, and all of Secs. 5 and 6 lying west and south of Kings River, and Secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, T. 15 S., R. 23 E., Secs. 1, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, T. 15 S., R. 22 E.; and Secs. 5 and 6, T. 16 S., R. 23 E.

REEDLEY—DISTRICT NO. 11

All of T. 13 S., R. 24 E., lying east and south of the east channel of Kings River; all of T. 13 S., R. 23 E., lying east and south of the east channel of Kings River; all of T. 14 S., R. 23 E., lying east and south of the east channel of Kings River; T. 14 S., R. 24 E., T. 14 S., R. 25 E., all of T. 15 S., R. 23 E., lying east of the east channel of Kings River; all of Secs. 28 and 34, T. 15 S., R. 23 E., lying west of Kings River; Sec. 33, T. 15 S., R. 23 E.; all of Sec. 4, T. 16 S., R. 23 E., lying within said county; and T. 15 S., R. 24 E.

KINGSBURG—DISTRICT NO. 12

Secs. 11, 12, 13, 14, 15, 21, 22, 23, 27, 28, and 33, T. 16 S., R. 22 E., and those portions of Secs. 24, 26 and 34, T. 16 S., R. 22 E., lying within said county; Sec. 7, T. 16 S., R. 23 E., and those portions of Secs. 8 and 18, T. 16 S., R. 23 E., lying within said county; and those portions of Secs. 4, 5, 8, 9, and 17, T. 17 S., R. 22 E., lying within said county.

SELMA—DISTRICT NO. 13

Secs. 25, 34, 35, and 36, T. 15 S., R. 21 E.; Secs. 19, 20, 28, 29, 30, 31, 32, 33, and 34, T. 15 S., R. 22 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 29, 30, 31, and 32, T. 16 S., R. 22 E.; the east one-half of T. 16 S., R. 21 E.; Secs. 1 to 23, both inclusive, T. 17 S., R. 21 E., and that part of Secs. 24 to 30, both inclusive, T. 17 S., R. 21 E., lying within said county; Secs. 6, and 7, T. 17 S., R. 22 E.; and those portions of Secs. 18 and 19, T. 17 S., R. 22 E., lying within said county.

MONMOUTH—DISTRICT NO. 14

Secs. 25, 26, 27, 34, 35, and 36, T. 15 S., R. 20 E.; Secs. 30, 31, and 32, T. 15 S., R. 21 E.; and the west one-half of T. 16 S., R. 21 E.

CARUTHERS—DISTRICT NO. 15

The south one-half of T. 15 S., R. 19 E.; Secs. 19, 28, 29, 30, 31, 32, and 33, T. 15 S., R. 20 E.; T. 16 S., R. 15 E.; T. 16 S., R. 16 E.; T. 16 S., R. 17 E.; T. 16 S., R. 18 E.; T. 16 S., R. 19 E.; T. 16 S., R. 20 E.; T. 17 S., R. 16 E.; T. 17 S., R. 17 E.; T. 17 S., R. 18 E.; T. 17 S., R. 19 E.; T. 17 S., R. 20 E.; T. 18 S., R. 16 E.; T. 18 S., R. 17 E.; T. 18 S., R. 18 E.; T. 19 S., R. 17 E.; T. 19 S., R. 18 E.; T. 20 S., R. 17 E.; and all of T. 20 S., R. 18 E., lying within said county.

(b) Three members for District No. 16 (Kings, Monterey, and San Benito Counties)

(c) Five members for District No. 17 (Tulare and Inyo Counties)

(d) Three members for District No. 18 (Kern, San Bernardino, Riverside, Imperial, San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties)

(e) Three members for District No. 19 (Madera and Mono Counties).

(f) Three members for District No. 20 (Merced, Tuolumne, and Mariposa Counties)

(g) Three members for District No. 21 (Stanislaus, Santa Clara, San Francisco, San Mateo, Santa Cruz, Alameda, Contra Costa, Calaveras, and Alpine Counties)

(h) One member for District No. 22 (San Joaquin, Marin, Solano, Sacramento, Amador, Eldorado, Placer, Nevada, Sutter, Yolo, Napa, Sonoma, Mendocino, Lake, Colusa, Yuba, Sierra, Plumas, Butte, Glenn, Tehama, Shasta, Lassen, Modoc, Siskiyou, Del Norte, Humboldt, and Trinity Counties)

§ 989.97 *Exhibit B; minimum grade and condition standards for natural condition raisins.*

Raisins meeting the varietal standards set forth hereinafter shall be considered as standard raisins and those failing to meet such standards shall be considered as off-grade raisins. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoilage, shall be considered as storable raisins.

A. *Thompson Seedless raisins.*

Natural condition Thompson Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Golden Seedless, Sulfur Bleached, and Soda Dipped shall not exceed 14 percent), as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Golden Seedless and Sulfur Bleached raisins shall possess a characteristic bleached color (or choice color). "Choice color" (or "bleached color") means that the raisins may be variable in color and may range from yellowish green to dark amber or dark greenish amber; that not more than 15 percent, by weight, of all the raisins may be definitely dark berries.

5. Soda Dipped raisins shall possess a good typical color characteristic of such raisins.

B. *Muscat raisins.*

Natural condition Muscat raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Layer Muscats shall not exceed 18 percent) as determined by Dried Fruit Moisture Tester Method and the raisins (except Layer Muscats) shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins; and that with respect to Layer Muscat raisins in addition to the above requirements the raisins shall be:

a. Fairly free from shattered (or loose end) berries.

b. Uniformly cured.

c. 30 percent or more "3 Crown size" or larger.

d. Of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet "U. S. Grade B" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Muscat (Valencia), soda dipped raisins shall possess a good typical color with not more than 10 percent, by weight, that may be dark reddish-brown raisins.

C. *Sultana raisins.*

Natural condition Sultana raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

D. *Zante Currants.*

Natural condition Zante Currants shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins for the varietal type.

3. The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U. S. Grade B" or better grade as defined in the effective United States Standards for Grades of Dried Currants.

Issued at Washington, D. C., this 26th day of August 1955, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] EARL L. BUTZ,
Acting Secretary.

[F. R. Doc. 55-7064; Filed, Aug. 31, 1955; 8:46 a. m.]

PART 1003—DOMESTIC DATES PRODUCED OR PACKED IN LOS ANGELES AND RIVERSIDE COUNTIES OF CALIFORNIA

ESTABLISHMENT OF FREE, RESTRICTED AND WITHHOLDING PERCENTAGES FOR 1955-56 CROP YEAR

Notice was published in the August 20, 1955, issue of the FEDERAL REGISTER (20 F R. 6104) that there was being considered a proposed rule to establish a free percentage of 87.75 percent, a restricted percentage of 12.25 percent and a withholding percentage of 14 percent on marketable Deglet Noor dates handled during the 1955-56 crop year. These percentages were recommended by the Date Administrative Committee in accordance with the applicable provisions of Marketing Agreement No. 127 and Marketing Order No. 103 (20 F R. 5056) regulating the handling of domestic dates produced and packed in Los Angeles or Riverside Counties of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) In said notice, opportunity was afforded all interested persons to file written data, views, or arguments with respect thereto. No such written data, views, or arguments were filed and the period provided therefore has now expired.

After consideration of all matters pertaining thereto, it is found that to establish a free percentage of 87.75 percent, a restricted percentage of 12.25 percent and a withholding percentage of 14 percent, as hereinafter provided, will tend to effectuate the declared policy of the act, and it is, therefore, ordered that such free, restricted and withholding percentages shall be as follows:

§ 1003.201 *Free, restricted and withholding percentages.* The free percentage of marketable Deglet Noor dates produced and packed in Los Angeles or Riverside Counties of California and shipped during the period beginning September 1, 1955 and ending July 31, 1956, shall be 87.75 percent, the restricted percentage of such dates for said period shall be 12.25 percent, and the withholding percentage of such dates for said period shall be 14 percent.

It is hereby found that delaying the effective date of this order for 30 days after its publication (see section 4 (c) of the Administrative Procedures Act; 5 U. S. C. 1001 et seq.) is impracticable, unnecessary, and contrary to the public interest in that shipments of marketable Deglet Noor dates will occur by the end of August, and it is necessary for effective regulation of such dates in the 1955-56 crop year that this order be made effective on the date of its publication in the FEDERAL REGISTER in order that handlers may know with certainty and as soon as is practicable the portion of their shipments of marketable Deglet Noor dates which must be withheld as restricted dates. No additional advance preparation on the part of date handlers for compliance with this order is needed. In these circumstances, this order must be made effective on September 1, 1955.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued this 29th day of August 1955.

[SEAL] S. R. SMITH,
Director
Fruit and Vegetable Division.

[F. R. Doc. 55-7103; Filed, Aug. 31, 1955; 8:52 a. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Effective upon publication in the FEDERAL REGISTER, paragraph (a) of § 6.150 is revoked.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633; E. O. 10440, March 31, 1953, 18 F. R. 1823, 3 CFR 1953 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 55-7097; Filed, Aug. 31, 1955; 8:51 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6292]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

PLATINOID METALS CO., INC., ET AL.

Subpart—*Misbranding or mislabeling:* § 13.1185 *Composition.* Subpart—*Using misleading name*—Goods: § 13.2280 *Composition.* In the offering for sale, sale, or distribution of jewelry, including finger rings, in commerce, using the word "Platinoid" or any other word or term of the same or similar import, in describing jewelry, including finger rings, which does not contain any platinum; prohibited.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Platinoid Metals Co., Inc., et al., New York, N. Y., Docket 6292, July 14, 1955]

In the Matter of Platinoid Metals Company, Inc., a Corporation, and David Benoliel, Ferdinand Ferri, and David Edelman, Individually and as Officers of Said Corporation

This proceeding was heard by John Lewis, hearing examiner, upon the complaint of the Commissioner, which charged respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the provisions of the Federal Trade Commission Act, in connection with the offering, etc., of jewelry, including finger rings; and upon a hearing before said hearing examiner, theretofore duly designated by the Commission, at which, respondents having failed to file answer to the complaint and failed to appear at the time and place fixed for hearing, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint.

Thereafter, following the granting of said motion by said hearing examiner and the closing of the hearing—it appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth—the proceeding regularly came on for final consideration by said hearing examiner upon the complaint and said motion of the attorney in support of the complaint, and said hearing examiner made his initial decision in which he set forth the aforesad matters; found, having duly considered the record in the matter, that the proceeding was in the interest of the public; and, pursuant to Rules V and VIII of the rules of practice of the Commission, made findings as to the facts,[1] conclusion[1] drawn therefrom, and order to cease and desist.

Thereafter said initial decision, including said order, as announced and decreed by "Decision of the Commission and Order to File Report of Compliance", dated June 30, 1955, became, on July 14, 1955, pursuant to § 3.21 of the Commission's rules of practice, the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That respondents, Platinoid Metals Company, Inc., a corporation, and its officers, and David Benoliel, Ferdinand Ferri, and David Edelman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of jewelry, including finger rings, in commerce as "commerce" is defined in

[1] Filed as part of original document.

the Federal Trade Commission Act, do forthwith cease and desist from the use of the word "Platinoid," or any other word or term of the same or similar import, in describing jewelry, including finger rings, which does not contain any platinum.

By said "Decision of the Commission" etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: June 30, 1955.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 55-7100; Filed, Aug. 31, 1955; 8:52 a. m.]

[Docket 6321]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

SUPERIOR WOOL BATTING CORP. ET AL.

Subpart—*Misbranding or mislabeling:* § 13.1190 *Composition. Wool Products Labeling Act;* § 13.1325 *Source or origin.* Maker or seller, etc.. *Wool Products Labeling Act.* Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1845 *Composition:* Wool Products Labeling Act; § 13.1900 *Source or origin.* Wool Products Labeling Act. In connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, of wool batts or battings or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool" "reprocessed wool" or "reused wool" as those terms are defined in said act, misbranding such products by 1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein; 2. Failing to securely affix to or place on each product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner: (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter; (c) the name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939; prohibited, subject to the proviso, however, that the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs "(a)" and "(b)" of section 3 of the Wool Products Labeling Act of 1939; and to the further provision that nothing contained in the order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U. S. C. 45, 68–68c) [Cease and desist order, Superior Wool Batting Corporation et al., Bronx, N. Y., Docket 6321, July 15, 1955]

In the Matter of Superior Wool Batting Corporation, a Corporation; and Mark Burney, Individually and as an Officer of Said Corporation

This proceeding was heard by Earl J. Kolb, hearing examiner, upon the complaint of the Commission which charged respondents with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the rules and regulations made pursuant to the latter, by misbranding certain wool products made by them for introduction into commerce, including certain wool batting; and upon a stipulation for consent order entered into by respondents with counsel in support of the complaint, which was duly approved by the Director and Assistant Director of the Bureau of Litigation, and in which it was expressly provided that the signing of said stipulation was for settlement purposes only and did not constitute an admission by respondents that they had violated the law as alleged in the complaint.

By the terms of said stipulation, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record in the matter might be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations, and all parties expressly waived the filing of answer, a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said stipulation, respondents further agreed that the order to cease and desist, issued in accordance with said stipulation, should have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order, and it was further provided that said stipulation, together with the complaint, should constitute the entire record in the matter, that the complaint in the matter might be used in construing the terms of the order issued pursuant to said stipulation, and that said order might be altered, modified, or set aside in the manner prescribed by the statute for orders of the Commission.

Thereafter said hearing examiner made his initial decision in which he set forth the aforesaid matters; his consideration of such stipulation and order, and his conclusion that they provided for appropriate disposition of the proceeding, and his acceptance of said stipulation, which he made a part of the record; and, in consonance with the terms of said stipulation, found that the Commission had jurisdiction of the subject matter of the proceeding and of the respondents, and that the proceeding was in the interest of the public; and in which he issued cease and desist order.

Thereafter said initial decision, including said order, as announced and decreed by "Decision of the Commission and Order to File Report of Compliance" dated August 3, 1955, became, on July 15, 1955, pursuant to § 3.21 of the Commission's rules of practice, the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That the respondent Superior Wool Batting Corporation, a corporation, and its officers, and Mark Burney, individually and as an officer of said corporation, and respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batts or battings or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products by

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more per-

sons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939:

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939, and

Provided further That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

By said "Decision of the Commission," etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 3, 1955.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 55-7101; Filed, Aug. 31, 1955; 8:52 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 141d—CHLORAMPHENICOL AND CHLORAMPHENICOL-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

PART 146b—CERTIFICATION OF STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) AND STREPTOMYCIN- (OR DIHYDROSTREPTOMYCIN-) CONTAINING DRUGS

PART 146e—CERTIFICATION OF BACITRACIN AND BACITRACIN-CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Secretary of Health, Education, and Welfare by the provisions of the Federal Food, Drug, and Cosmetic Act (Sec. 507, 59 Stat. 463, 61 Stat. 11, 63 Stat. 409, 67 Stat. 389; sec. 701, 52 Stat. 1055; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (20 F R. 1996) the regulations for tests and methods of assay and certification of antibiotic and antibiotic-containing drugs (21 CFR, 1954 Supp., Parts 141c, 141d, 141e, 146a, 146b, 146e; 20 F R. 489, 1643, 2481) are amended as indicated below:

1. In § 141c.217 *Chlortetracycline calcium oral drops * * * paragraph* (c) *Toxicity* is amended by changing the words "of chlortetracycline or tetracycline" to read: "if it is chlortetracycline or 12.5 milligrams if it is tetracycline."

2. Section 141d.303 (a) is amended to read as follows:

§ 141d.303 *Chloramphenicol ointment*—(a) *Potency.* Proceed as directed in § 141d.301 (a) except § 141d.301 (a) (8) and (9) and in lieu of the directions in subparagraph (4) of § 141d.301 (a) prepare the sample by one of the following methods:

(1) Place an accurately weighed representative sample (usually 1.0 gram of the ointment) in a blending jar containing 1 milliliter of a 10-percent aqueous solution of polysorbate 80 and sufficient 1-percent phosphate buffer at pH 6.0 to make 100 milliliters. Using a high-speed blender, blend the mixture for 2 minutes and make the proper estimated dilutions in 1-percent phosphate buffer at pH 6.0.

(2) Place a representative sample (0.5 gram) in a separatory funnel containing 10 milliliters of peroxide-free ether. Shake the separatory funnel vigorously to bring about complete mixing of the ointment and ether. Shake with a 15-milliliter portion of 1-percent phosphate buffer at pH 6.0. Remove the buffer layer and repeat the extraction with two additional 15-milliliter portions of buffer. Combine the extractives and dilute to 50 milliliters with 1-percent phosphate buffer. Make the proper estimated dilutions in 1-percent phosphate buffer at pH 6.0.

The potency of chloramphenicol ointment is satisfactory if it contains not less than 85 percent of the number of milligrams per gram that it is represented to contain.

3. Part 141e is amended by adding the following new section:

§ 141e.426 *Tablets bacitracin methylene disalicylate and streptomycin sulfate oral veterinary*—(a) *Potency*—(1) *Bacitracin content.* Use 6 finely powdered tablets and proceed as directed in § 141e.417 (a) (1) Its bacitracin activity is satisfactory if it is not less than 85 percent of that which it is represented to contain.

(2) *Streptomycin content.* Proceed as directed in § 141b.109 (a) (1) of this chapter. Its streptomycin activity is satisfactory if it is not less than 85 percent of that which it is represented to contain.

(b) *Moisture.* Proceed as directed in § 141a.5 (a) of this chapter.

4. Section 146a.27 *Penicillin tablets* is amended by adding the following new paragraph:

(f) *Exemption of penicillin tablets from certification.* Penicillin tablets, with or without added vitamin substances and residues from streptomyces fermentation, shall be exempt from the requirements of sections 502 (I) and 507 of the act, if they comply with the following conditions:

(1) They contain not more than 1,000 units per tablet.

(2) The outside wrapper or container and the immediate container bear an expiration date that is not more than 36 months after the month during which the batch was last assayed and released by the manufacturer.

(3) They are intended to be administered only in the drinking water of poultry for use solely as a feed supplement and are conspicuously so labeled; they are not represented for the prevention or treatment of disease; and their labeling bears adequate directions for use by laymen.

5. In § 146a.98 *Hydrabamine penicillin G oral suspension,* paragraph (a) *Standards of identity * * ** is amended by changing the number "6.0" to read "5.5"

6. Section 146b.121 *Streptomycin-erythromycin ointment* is amended in the following respects:

a. Paragraph (a) is amended to read as follows:

(a) *Standards of identity, strength, quality, and purity.* Streptomycin-erythromycin ointment is streptomycin and erythromycin in a suitable and harmless ointment base, with or without one or more suitable sulfonamides and with or without suitable and harmless dispersing and suspending agents. Its moisture content is not more than 1.0 percent. It contains per gram not less than 3 milligrams of streptomycin and not less than 5 milligrams of erythromycin. The streptomycin used conforms to the requirements of § 146b.101 (a), except § 146b.101 (a) (2), (4) and (5) The erythromycin used is produced by the growth of Streptomyces erythreus, has a potency of not less than 850 micrograms per milligram (on the anhydrous basis) is nontoxic, has a moisture content of not more than 10 percent, its pH in a saturated aqueous solution is not less than 8 and not more than 10.5, and it gives a characteristic color test with acetone and hydrochloric acid. Each other substance used, if its name is recognized in the U. S. P or N. F., conforms to the standards prescribed therefor by such official compendium.

b. Paragraph (c) *Labeling* is amended by renumbering subdivisions (iii) and (iv) of subparagraph (1) as (iv) and (v) respectively, and inserting the following new subdivision (iii) between subdivision (ii) and renumbered subdivision (iv)

(iii) If it contains one or more sulfonamides, the name and quantity of each such ingredient in each gram or milliliter of the batch.

c. Paragraph (c) is further amended by renumbering subparagraph (2) as (3) and inserting the following new subparagraph (2) between subparagraph (1) and renumbered subparagraph (3)

(2) On the label and labeling, if it contains one or more sulfonamides, after the name "streptomycin-erythromycin ointment," wherever it appears, the

words "with sulfonamide(s)" in juxtaposition with such name.

d. Paragraph (d) *Request for certification* * * * is amended by inserting in subparagraph (3) (iv) immediately after the words "dispersing agents" the words "and sulfonamides"

7. Part 146e is amended by adding the following new section:

§ 146e.426 *Tablets bacitracin methylene disalicylate and streptomycin sulfate oral veterinary.* Tablets bacitracin methylene disalicylate and streptomycin sulfate oral veterinary are tablets that conform to all requirements and are subject to all procedures prescribed by § 146e.417 for powder bacitracin methylene disalicylate and streptomycin sulfate oral veterinary, except that:

(a) Each tablet shall contain not less than 200 units of bacitracin activity and not less than 20 milligrams of streptomycin activity.

(b) In lieu of the directions for labeling prescribed by § 146e.417 (c) (1) (ii) each package shall bear on the outside wrapper or container and the immediate container the quantity of each antibiotic in each tablet.

(c) In lieu of the directions for sampling the batch as prescribed in § 146e.417 (d) (3) (i) the sample shall consist of not less than 30 tablets and not more than 100 tablets.

(d) The fee for the services rendered with respect to each tablet in the sample submitted in accordance with the requirements prescribed therefor by paragraph (c) of this section shall be $1.00.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it would be against public interest to delay providing for the amendments set forth above, and since it conditionally relaxes existing requirements.

I further find under authority provided in the Federal Food, Drug, and Cosmetic Act (sec. 507 (c) 59 Stat. 463; 21 U. S. C. 357 (c)) that penicillin tablets containing not more than 1,000 units per tablet and the other ingredients specified in amendment 4 need not comply with the requirements of sections 502 (1) and 507 of the act, in order to insure their safety and efficacy, provided they are intended for use only as indicated in the regulation and bear directions for such use and the other required labeling.

This order shall become effective upon publication in the FEDERAL REGISTER since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interpret or apply sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

Dated: August 25, 1955.

[SEAL] JOHN L. HARVEY,
Acting Commissioner of Food and Drugs.

[F. R. Doc. 55-7091; Filed, Aug. 31, 1955; 8:50 a. m.]

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC- AND ANTIBIOTIC-CONTAINING DRUGS

PART 146b—CERTIFICATION OF STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) AND STREPTOMYCIN- (OR DIHYDROSTREPTOMYCIN-) CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Secretary of Health, Education, and Welfare by the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, 61 Stat. 11, 63 Stat. 409, 67 Stat. 389; sec. 701, 52 Stat. 1055; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (20 F. R. 1996) the regulations for certification of antibiotic and antibiotic-containing drugs (21 CFR, 1954 Supp., Parts 146, 146b) are amended as indicated below:

1. In § 146.26 *Animal feed containing penicillin* * * * paragraph (b) is amended in the following respects:

a. Subparagraph (18) is amended by inserting, immediately after the words "(air-sac infection)" a comma and the words "nonspecific enteritis, infectious sinusitis," and by changing the figure "60" to read "50"

b. Subparagraph (19) is amended by inserting, immediately after the words "(air-sac infection)", a comma and the words "nonspecific enteritis, infectious sinusitis," and by changing the figure "120" to read "100"

2. Section 146b.108 *Streptomycin syrup, streptomycin and kaolin in gel* * * * is amended in the following respects:

a. In paragraph (a) *Standards of identity* * * * the second sentence is revised to read as follows: "Streptomycin and kaolin in gel and dihydrostreptomycin and kaolin in gel are streptomycin or dihydrostreptomycin dissolved or suspended in a suitable and harmless gel base that contains kaolin and one or more suitable and harmless preservatives, with or without one or more suitable and harmless suspending, dispersing, or flavoring agents and with or without pectin, bismuth glycolylarsanilate, bismuth magma, suitable mineral salts, or procaine hydrochloride."

b. In paragraph (c) *Labeling*, subparagraph (1) (v) is changed to read as follows:

(v) If it contains pectin, kaolin, bismuth magma, bismuth glycolylarsanilate, mineral salts, or procaine hydrochloride, the quantity of each such ingredient used and the name of the gel base.

c. Paragraph (c) is further amended by changing subparagraph (3) to read as follows:

(3) On the label and labeling, if it contains bismuth glycolylarsanilate, bismuth magma, or procaine hydrochloride, after the name "streptomycin and kaolin in gel" or "dihydrostreptomycin and kaolin in gel," wherever it appears, the words "with bismuth glycolylarsanilate" or "with bismuth magma" or "with procaine hydrochloride," in juxtaposition with such name.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes existing requirements, and since it would be against public interest to delay providing for the amendments set forth above.

I further find that animal feeds containing antibiotic drugs need not comply with the requirements of sections 502 (1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure their safety and efficacy, provided they are used in the amounts and for the purposes specified in these amendments.

This order shall become effective upon publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interprets or applies sec. 507, 59 Stat. 463, 61 Stat. 11; 21 U. S. C. 357)

Dated: August 25, 1955.

[SEAL] JOHN L. HARVEY,
Acting Commissioner of Food and Drugs.

[F. R. Doc. 55-7092; Filed, Aug. 31, 1955; 8:50 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter A—Aid of Civil Authorities and Public Relations

PART 511—ASSISTANCE TO RELATIVES AND OTHERS IN CONNECTION WITH DECEASED PERSONNEL

RESPONSIBILITY FOR REPORTING AND NOTIFICATION; CORRESPONDENCE

Section 511.1 is revised and § 511.3 is revoked, as follows:

§ 511.1 *Responsibility for reporting and notification.* (a) The responsibility for reporting casualties and nonbattle losses to The Adjutant General and making notification to the emergency addressee or other authorized persons is as follows:

(1) *In continental United States.* (i) The commander of the Army installation where the incident occurs, or the Army installation nearest the place of the incident in case of personnel absent from their proper station, will report to The Adjutant General.

(ii) The reporting commander will make notification to the emergency addressee or other authorized persons who reside in the continental United States. When it is impracticable for the installation commander to effect notification he should report the fact to The Adjutant General who will make the notification.

(iii) The Adjutant General will effect notification when the person to be notified resides outside the continental United States.

(2) *In oversea commands.* (i) The commander will report to The Adjutant General a case which occurs within that command.

(ii) Notification to the emergency addressee or other authorized persons will be made by the oversea commander when the person to be notified is within the reporting command or is outside the command but not within the continental United States and is more accessible to the oversea commander than to The Adjutant General.

(iii) The Adjutant General will notify the emergency addressee or other authorized persons except as provided in subdivision (ii) of this subparagraph.

(3) *On high seas.* (i) The Army unit commander or other senior Army representative aboard ship will report to The Adjutant General (through port authorities) a case which occurs on the high seas.

(ii) When the person to be notified is aboard the ship, notification will be made by the Army unit commander or senior Army representative aboard. When this person is at the port of expected arrival, notification will be made by the port commander.

(iii) Notification to the emergency addressee or other authorized persons will be made by The Adjutant General except when the person to be notified is aboard the ship or is at the port of expected arrival.

(4) *In other areas.* In cases not included within subparagraphs (1) (2) or (3) of this paragraph, the senior Army representative within the area will report to The Adjutant General. Notification to the emergency addressee or other authorized persons will be the same as outlined in subparagraph (2) (ii) and (iii) of this paragraph.

(b) In cases of a casualty or nonbattle loss while the individual is absent from his proper station, his commanding officer will be informed by the fastest means available.

§ 511.3 *Correspondence.* [Revoked.]

[AR 600-400, SR 600-400-10, 23 Aug. 1954] (R. S. 161; 5 U. S. C. 22)

[SEAL] JOHN A. KLEIN,
Major General, U S. Army,
The Adjutant General.

[F. R. Doc. 55-7074; Filed, Aug. 31, 1955; 8:46 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

[ODM Regulation 1, Amdt. 1]

ODM REG. 1—ISSUANCE OF NECESSITY CERTIFICATES UNDER SECTION 124A[1] OF THE INTERNAL REVENUE CODE

GRANTING ACCELERATED TAX AMORTIZATION FOR THE RECONSTRUCTION, REHABILITATION, AND REPLACEMENT OF EMERGENCY FACILITIES DESTROYED OR DAMAGED BY MAJOR DISASTER

Pursuant to the authority vested in me by Executive Order No. 10480 of August 14, 1953, and Section 168 of the Internal Revenue Code of 1954, I hereby amend with the approval of the President, ODM Reg. 1 of February 2, 1954 (19 F. R. 747) by adding at the end thereof a section 6 reading as follows:

SEC. 6. Notwithstanding the foregoing, accelerated tax amortization pursuant to Section 168 of the Internal Revenue Code of 1954 may be granted for the reconstruction, rehabilitation, and replacement of facilities destroyed or damaged by major disaster as defined and determined under the provisions of the act entitled "An Act to Authorize Federal Assistance to States or Local Governments in Major Disasters, and for Other Purposes" (64 Stat. 1109) whenever such facilities will be used for production of materials or services required for national defense as reflected by their inclusion in expansion goals established by the Office of Defense Mobilization whether or not such goals remain open.

(Sec. 216, 64 Stat. 939; 26 U. S. C. 124A; E. O. 10480, 18 F. R. 4939, 3 CFR, 1953 Supp.)

This amendment shall be effective as of August 24, 1955.

ARTHUR S. FLEMMING,
Director
Office of Defense Mobilization.

Approved: August 25, 1955.

DWIGHT D. EISENHOWER

[F. R. Doc. 55-7132; Filed, Aug. 31, 1955; 11:06 a. m.]

[1] Section 168, Internal Revenue Code, 1954.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1926]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

PART 216—PAYMENTS

PART 285—TIMBER AND STONE ENTRIES

REVOCATION OF CERTAIN MATERIAL

Sections 101.16 and 216.11 and Part 285 are hereby revoked in their entirety.

ORME LEWIS,
Acting Secretary of the Interior

AUGUST 26, 1955.

[F. R. Doc. 55-7079; Filed, Aug. 31, 1955; 8:47 a. m.]

[Circular No. 1924]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

FILING FEES

Section 191.11 is amended to read as follows:

§ 191.11 *Filing fees.* Offers for noncompetitive oil and gas leases and all applications for prospecting permits, leases or licenses, excepting licenses to relief agencies as provided in § 193.30 of this chapter, must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

FRED G. AANDAHL,
Acting Secretary of the Interior

AUGUST 25, 1955.

[F. R. Doc. 55-7077; Filed, Aug. 31, 1955; 8:47 a. m.]

[Circular No. 1923]

PART 194—POTASSIUM PERMITS AND LEASES

EXTENSION OF PERMITS

Section 194.11 is amended by adding the following:

The application for extension must be accompanied by a filing fee of $10, which will be retained as a service charge even though the application is later withdrawn or rejected.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

FRED G. AANDAHL,
Acting Secretary of the Interior

AUGUST 25, 1955.

[F. R. Doc. 55-7076; Filed, Aug. 31, 1955; 8:46 a. m.]

[Circular No. 1925]

PART 196—PHOSPHATE LEASES AND USE PERMITS

MISCELLANEOUS AMENDMENTS

The first paragraph of § 196.7 is amended; a new paragraph is added at the end of § 196.13; and § 196.18 (b) is amended to read as follows:

§ 196.7 *Application for lease.*[1] Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. A filing fee of $10, which will be retained as a service charge in any event, must accompany each application. A noncompetitive lease application must also be accompanied by the first year's rental of twenty-five cents per acre for each acre of land or part thereof included in the lease application. No specific form is required but an application should cover the following points:

* * * * *

§ 196.13 *Assignments of leases: subleases.* * * *

(d) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of $10. An application

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

§ 196.18 *Use permits for additional lands.* * * *

(b) Applications for permits for such additional land shall be filed in the office specified in § 196.7 A filing fee of $10, which will be retained as a service charge in any event, must accompany each application. Such applications must set forth the specific reasons why the additional land is necessary to the lessee for the use named, describe the land desired in accordance with § 196.7 (d) and also set forth the reasons why the land is desirable and adapted to the use named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4–1111 and dated as of the first day of the month after its issuance unless the lessee requests that it be dated the first day of the month of issuance.

FRED G. AANDAHL,
Acting Secretary of the Interior

AUGUST 25, 1955.

[F. R. Doc. 55–7078; Filed, Aug. 31, 1955; 8:47 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

Subchapter B—Hunting and Possession of Wildlife

PART 6—MIGRATORY BIRDS AND CERTAIN GAME MAMMALS

OPEN SEASONS, BAG LIMITS, AND POSSESSION OF CERTAIN MIGRATORY GAME BIRDS

Basis and purpose. On August 12, 1955, amendments to Part 6, Title 50, Code of Federal Regulations, were adopted to prescribe daily bag and possession limits for migratory waterfowl, coots, and Wilson's snipe (jacksnipe) and to fix season lengths and the earliest opening and latest closing dates within which the several State Game Departments might make selections of their 1955–56 seasons for hunting these birds. These amendments were adopted pursuant to authority contained in section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U. S. C. 704) and were published in the FEDERAL REGISTER on August 19, 1955 (20 F. R. 6046)

After according due consideration to all relevant material submitted pursuant to the Notice of Proposed Rule Making published on July 6, 1955 (20 F. R. 4775) and the data submitted by the several State Game Departments in response to the amendments adopted on August 12, 1955, the regulations under the Migratory Bird Treaty Act are further amended as follows:

1. The schedules designated as subparagraphs (2) *Mississippi Flyway States,* (3) *Central Flyway States,* (4) *Pacific Flyway States,* and (4a) *Mourning (turtle) doves,* of § 6.4 (e) as the same appear in 20 F. R. 6093 and 6099, are amended as follows:

a. Subparagraph (2) *Mississippi Flyway States* is amended to prescribe seasons in Alabama on rails and gallinules from November 7 to January 5 and on woodcock in said State from December 12 to January 20; and is further amended to prescribe seasons on rails and gallinules in Michigan and Wisconsin from October 1 to November 29.

b. Subparagraph (3) *Central Flyway States* is amended to prescribe a season on rails and gallinules in New Mexico from November 2 to December 31.

c. Subparagraph (4) *Pacific Flyway States* is amended by substituting the words "No open season" in lieu of the words "See footnote 1" appearing opposite the word "Utah" and by deleting the footnote designated by the figure "1" at the end of the said subparagraph.

d. Subparagraph (4a) *Mourning (turtle) doves* is amended to prescribe full-day seasons on mourning (turtle) doves in Alabama from October 1 to October 18 and from December 16 to January 1.

2. The schedules designated as subparagraphs (5) *Atlantic Flyway States,* (6) *Mississippi Flyway States,* (7) *Central Flyway States,* and (8) *Pacific Flyway States,* of § 6.4 (e) are amended to read as follows:

(5) *Atlantic Flyway States.*

MIGRATORY WATERFOWL, COOTS, AND WILSON'S SNIPE

	Ducks	Geese (except snow geese)	Coots	Brant	Wilson's snipe (jacksnipe)
Daily bag limits	[1] 4 [1] 8	2 4	10 10	6 6	8 8
Possession limits					
Seasons in:					
Connecticut [2]	Oct. 22-Dec. 30				No open season.
Delaware	Nov. 4-Jan. 12				Nov. 4-Nov. 15.
District of Columbia	No open season				No open season.
Florida	Nov. 7-Jan. 15				Dec. 24-Jan. 7.
Georgia	Nov. 7-Jan. 15				Dec. 1-Dec. 15.
Maine [3]	Oct. 7-Dec. 15				Oct. 8-Oct. 22.
Maryland	Nov. 7-Jan. 15				Nov. 15-Nov. 29.
Massachusetts [2]	Oct. 21-Dec. 29				Oct. 29-Nov. 3.
New Hampshire [3]	Oct. 7-Dec. 15				Oct. 1-Oct. 15.
New Jersey	Oct. 29-Jan. 6				Oct. 29-Nov. 12.
New York [4]	See footnote 3				See footnote 4
North Carolina	Nov. 7-Jan. 14				Nov. 24-Dec. 8.
Pennsylvania	See footnote 5				Oct. 1-Oct. 15.
Rhode Island [2]	Nov. 7-Jan. 15				Nov. 1-Nov. 15.
South Carolina	Nov. 7-Jan. 15				Dec. 31-Jan. 14.
Vermont	Oct. 5-Dec. 13				No open season.
Virginia	Nov. 7-Jan. 15				Nov. 21-Dec. 5.
West Virginia	Oct. 29-Jan. 6				Oct. 15-Oct. 29.
Puerto Rico	Dec. 15-Feb. 12				No open season.

[1] Wood ducks and mergansers: Daily bag limit may include one wood duck, possession limit 2. Daily bag and possession limits may include one hooded merganser only. American and red-breasted mergansers are to be included in the daily bag and possession limits on other ducks.

[2] For seasons and bag limits on scoter, elder, and old-squaw ducks in the States indicated, see footnote 1 to subparagraph (1) Atlantic Flyway States (rails, gallinules and woodcock) of § 6.4 (e), as the same appears in 20 F. R. 6098 (August 29, 1955).

[3] New York: Waterfowl and coots, Oct. 15–Dec. 23. *Provided,* That on Long Island the season shall be Oct. 29–Jan. 6.

[4] New York: Wilson's snipe (jacksnipe), Oct. 15–Oct. 29. *Provided,* That on Long Island the season shall be Oct. 29–Nov. 12.

[5] Pennsylvania. Waterfowl and coots, Oct. 10–Dec. 17 except in the counties of Bucks, Philadelphia, and Delaware, and the Delaware River bordering on such counties, where the season shall be Oct. 29–Jan. 6.

(6) *Mississippi Flyway States.*[1]

MIGRATORY WATERFOWL, COOTS, AND WILSON'S SNIPE

	Ducks	Geese	Coots	Wilson's snipe (jacksnipe)
Daily bag limits	[2] 4 [2] 8	[3] 5 [3] 5	10 10	8 8
Possession limits				
Seasons in:				
Alabama	Nov. 7-Jan. 15			Jan. 1-Jan. 15.
Arkansas	Nov. 7-Jan. 15			Dec. 1-Dec. 15.
Illinois	Oct. 15-Dec. 23			Oct. 29-Nov. 8.
Indiana	Oct. 22-Dec. 30			Oct. 15-Oct. 29.
Iowa	Oct. 8-Dec. 16			Oct. 8-Oct. 22.
Kentucky	Nov. 7-Jan. 15			Nov. 19-Dec. 3.
Louisiana	See footnote 3			Jan. 1-Jan. 15.
Michigan	Oct. 1-Dec. 9			Oct. 1-Oct. 15.
Minnesota	Oct. 8-Dec. 16			Oct. 8-Oct. 22.
Mississippi	See footnote 4			Dec. 27-Jan. 10.
Missouri	Oct. 23-Jan. 5			Oct. 23-Nov. 11.
Ohio	See footnote 5			Oct. 18-Nov. 1.
Tennessee	Nov. 7-Jan. 15			Nov. 24-Dec. 8.
Wisconsin	Oct. 1-Dec. 9			Oct. 1-Oct. 15.

[1] Wood ducks and mergansers: Daily bag and possession limits may include one wood duck and one hooded merganser. American and red-breasted mergansers are to be included in the daily bag and possession limits on other ducks.

[2] Geese: Such limit may not include more than (a) 2 Canada geese or its subspecies; (b) 2 white-fronted geese or (c) 1 Canada goose or its subspecies and 1 white-fronted goose.

[3] Louisiana. Waterfowl and coots, Nov. 5–Jan. 13: *Provided,* That for lands and waters of the State of Louisiana lying easterly of the center line of the main navigable channel of the Mississippi

[1] Except as provided in footnote 5, the shooting hours for waterfowl and coots in these States are one-half hour before sunrise to one-half hour before sunset and for Wilson's snipe (jacksnipe) one-half hour before sunrise to sunset.

River between the northerly boundary of Louisiana and latitude 31° N., the season shall be Nov. 7–Jan. 15.

[4] Mississippi. Waterfowl and coots, Nov. 7–Jan. 15 *Provided,* That for lands and waters of the State of Mississippi lying westerly of the center line of the main navigable channel of the Mississippi River from the northerly boundary of Louisiana to latitude 31° N., the season shall be Nov. 5–Jan. 13.

[5] Ohio Waterfowl and coots, Oct. 18–Dec. 26 *Provided,* That for Pymatuning Reservoir in Ashtabula County, and one-fourth mile distant in any direction from said reservoir, the season shall be Oct. 10–Dec. 17, and the shooting hours for the area described shall be one-half hour before sunrise to sunset.

(7) *Central Flyway States.*

MIGRATORY WATERFOWL, COOTS, AND WILSON'S SNIPE

	Ducks	Coots	Geese (except Ross's geese)	Wilson's snipe (jacksnipe)
Daily bag limits	[1] 5	10	[2] 5	8
Possession limits	[1] 10	10	[2] 5	8
Seasons in:				
Colorado	Oct. 25–Jan. 7		Nov. 1–Dec. 30	Nov. 1–Nov. 15.
Kansas	Oct. 9–Dec. 22		Oct. 9–Dec. 7	Oct. 9–Oct. 23.
Montana	Oct. 8–Dec. 21		Oct. 8–Dec. 6	No open season.
Nebraska	Oct. 8–Dec. 21		Oct. 15–Dec. 13	No open season.
New Mexico	Nov. 2–Jan. 15		Nov. 2–Dec. 31	Nov. 2–Nov. 16.
North Dakota	Oct. 1–Dec. 14		Oct. 1–Nov. 29	Oct. 1–Oct. 15.
Oklahoma	Oct. 22–Jan. 4		Oct. 22–Dec. 20	Oct. 22–Nov. 5.
South Dakota	Oct. 1–Dec. 14		Oct. 16–Dec. 14	Oct. 1–Oct. 15.
Texas [3]	Nov. 2–Jan. 15		Nov. 17–Jan. 15	Jan. 1–Jan. 15.
Wyoming	Oct. 18–Dec. 31		Nov. 2–Dec. 31	No open season.

[1] Wood ducks and mergansers: Daily bag and possession limits may include one wood duck and one hooded merganser. American and red-breasted mergansers are to be included in the daily bag and possession limits on other ducks.

[2] Geese. Such limit may not include more than (a) 2 Canada geese or its subspecies (b) 2 white-fronted geese or (c) 1 Canada goose or its subspecies and 1 white-fronted goose. No open season on snow geese in Beaverhead, Gallatin, and Madison counties in Montana, or in Lincoln and Teton counties, Wyoming.

[3] Texas: No open season on black-bellied tree duck.

(8) *Pacific Flyway States.*

MIGRATORY WATERFOWL, COOTS, AND WILSON'S SNIPE

	Ducks	Geese (except Ross's geese)	Coots	Brant	Wilson's snipe (jacksnipe)
Daily bag limits	[1] 6	[2] 6	25	3	8
Possession limits	[1] 12	[2] 6	25	3	8
Seasons in:					
Arizona	Oct. 28–Jan. 15			No open season	No open season.
California	See footnotes 1 and 3			Dec. 6–Feb. 10	Dec. 10–Dec. 24.
Idaho [4]	Oct. 13–Dec. 31			No open season	No open season.
Nevada	See footnote 5			No open season	Oct. 15–Oct. 29.
Oregon	Oct. 22–Jan. 9			Dec. 1–Feb. 10	Nov. 27–Dec. 11.
Utah	Oct. 15–Jan. 2			No open season	No open season.
Washington	Oct. 15–Jan. 2			Dec. 1–Feb. 10	Oct. 30–Nov. 13.

[1] Except in California, the daily bag limit of 6, possession limit of 12, may be increased to 9 and 15, respectively, provided such limits contain not less than 3 pintails, 3 widgeons or 3 of these species in the aggregate. In California, the daily bag and possession limit is 7, which may be increased to 10, provided such limit contains not less than 3 pintails, 3 widgeons or 3 of these species in the aggregate. Wood ducks and mergansers Daily bag and possession limits may include one wood duck and one hooded merganser. American and red-breasted mergansers are to be included in the daily bag and possession limits on other ducks.

[2] Geese Not more than 3 of the dark species of geese may be included in the daily bag and possession limit: *Provided,* That in the counties of Yuma and Mohave, Arizona the counties of Bear Lake, Caribou, and Bonneville, Idaho the counties of Yamhill, Polk, Benton, Lane and Linn, Oregon, and in the entire State of Utah, the daily bag and possession limit may not include more than 2 Canada geese. *Provided further* That in California Fish and Game District No. 22 (as defined in the California Fish and Game Code) the daily bag and possession limit may not include more than 1 Canada goose.

[3] California. Waterfowl (except brant) and coots, Oct. 15–Nov. 18 and Dec. 10–Jan. 15 *Provided,* That in those portions of San Bernardino, Riverside, and Imperial Counties, east of U. S. Highway 95 from the Nevada line south of Blythe and east of the paved and graded road extending from Blythe to Ripley, Palo Verde, and Ogilby south to its intersection with U. S. Highway 80 thence east to Yuma, the season shall be Oct. 28–Jan. 15.

[4] Idaho No open season on snow geese in the counties of Clark, Fremont, Madison, and Teton.

[5] Nevada. Waterfowl (except brant) and coots, Oct. 15–Jan. 2 *Provided,* That in that portion of the State lying south and east of a line beginning at a point where Highway 91 intersects the Arizona-Nevada State line; thence following Highway 91 to its intersection with the Virgin River thence following the north bank of the Virgin River in a southwesterly direction to its intersection with Highway 91 thence following Highway 91 to Las Vegas; thence following Highway 95 to its intersection with the California-Nevada State line, the season shall be Oct. 28–Jan. 15.

(Sec. 3, 40 Stat. 755, as amended; 16 U. S. C. 704. Interprets or applies E. O. 10250, 16 F. R. 5385, 3 CFR, 1951 Supp.)

The foregoing amendments shall become effective 30 days after publication in the FEDERAL REGISTER.

Issued at Washington, D. C., and dated August 25, 1955.

FRED G. AANDAHL,
Acting Secretary of the Interior

[F. R. Doc. 55–7033; Filed, Aug. 31, 1955; 8:45 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 126—CLASSES OF CARRIERS

CLASSIFICATION OF OPERATING CARRIERS BY RAILROAD FOR REPORTING PURPOSES

At a session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 16th day of August A. D. 1955.

The matter of classification of operating carriers by railroad, including switching and terminal companies, being under consideration; and

It appearing that a notice dated June 15, 1955, was served on all railroad companies, including switching and terminal companies subject to the provisions of Part I of the Interstate Commerce Act, to the effect that certain modifications in the provisions for classification of said operating carriers by railroad had been approved, such notice also being published in the FEDERAL REGISTER on June 21, 1955 (20 F R. 4329) pursuant to provisions of section 4 of the Administrative Procedures Act; and

It further appearing that the notice provided for written views or arguments to be filed by any interested person on or before 30 days after the date of the notice, and full consideration having been given to representations so received;

It is ordered, That the order dated November 22, 1920, and amending Order dated March 22, 1937, In the Matter of the Classification of Operating Carriers by Steam Railway (49 CFR 126.1) be, and they are hereby, vacated and set aside, effective January 1, 1956, except so far as they relate to periods of time prior to that date, and the following order be and it is hereby substituted therefor.

§ 126.1 *Classification of carriers for reporting purposes.* (a) For the purposes of annual, other periodical, and special reports, operating carriers by railroad subject to the provisions of Part I of the Interstate Commerce Act shall be, and they are hereby, divided into two general classes designated respectively as class I and class II. Class I shall include all carriers having annual operating revenues of $3,000,000 or more; and class II, all carriers having annual operating revenue less than $3,000,000.

(b) In applying this classification to any switching or terminal company which is operated as a joint facility of owning or tenant railways, the sum of the annual railway operating revenues, the joint facility rent income, and the returns to joint facility credit accounts in operating expenses, shall be used in determining its class.

(c) Beginning with the calendar year 1956, the classification of operating railroads shall be based on the average annual operating revenues for the 3-year period ended with the calendar year 1955; and, subsequently, if at the close of any calendar year the average of the annual operating revenues for the latest 3-year period is greater or less than the

amount applicable to the class in which the carrier has been reporting, its class for the second succeeding year shall change accordingly and shall remain in such class for a period of not less than three consecutive years; *Provided,* That: (1) Carriers which have operated for a period less than three calendar years shall be classified upon the basis of the average amount of their annual operating revenues for the latest period of such operation; (2) newly organized carriers which commence operations for revenue subsequent to January 1, 1956, shall be assigned to classes, as above defined, on the basis of their operating revenues known or estimated for a year; (3) nothing contained in this order shall prevent changes in the assignment of carriers to classes on the part of the Commission deemed to be warranted by special conditions; and (4) carriers shall within 60 days after the close of a calendar year notify the Commission's Bureau of Transport Economics and Statistics when a change in classification has taken place.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies sec. 20, 24 Stat. 383, as amended; 49 U. S. C. 20)

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 55-7036; Filed, Aug. 31, 1955; 8:51 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PENSION, PROFIT-SHARING, STOCK BONUS AND ANNUITY PLANS

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 402, 404, and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 402, 404, 7805)

[SEAL] O. GORDON DELK, *Acting Commissioner of Internal Revenue.*

The following regulations are hereby prescribed under sections 401 through 404 of the Internal Revenue Code of 1954, relating to pension, profit-sharing, stock bonus, and annuity plans, and compensation paid under a deferred-payment plan. These regulations shall be effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954.

Sec.

§ 1.401 *Statutory provisions; qualified pension, profit-sharing, and stock bonus plans.*

SEC. 401. *Qualified pension, profit-sharing, and stock bonus plans*—(a) *Requirements for qualification.* A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) If contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404 (a) (3) (B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) If under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) If the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar year, or

(B) Such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

and

(4) If the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(5) A classification shall not be considered discriminatory within the meaning of paragraph (3) (B) or (4) merely because it excluded employees the whole of whose remuneration constitutes "wages" under section 3121 (a) (1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121 (a) (1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(b) *Certain retroactive changes in plan.* A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

(c) *Cross reference.* For exemption from tax of a trust qualified under this section, see section 501 (a).

§ 1.401–1 *Qualified pension, profit-sharing and stock bonus plans*—(a) *Introduction.* (1) Sections 401 through 404 relate to pension, profit-sharing, stock bonus, and annuity plans, and compensation paid under a deferred-payment plan. Section 401 (a) prescribes the requirements which must be met for qualification of a trust forming part of a pension, profit-sharing, or stock bonus plan.

(2) A qualified pension, profit-sharing, or stock bonus plan is a definite written program and arrangement which is communicated to the employees and which is established and maintained by an employer—

(i) In the case of a pension plan, to provide for the livelihood of the employees or their beneficiaries after the retirement of such employees through the payment of benefits determined without regard to profits (see paragraph (b) (1) (i) of this section)

(ii) In the case of a profit-sharing plan, to enable employees or their beneficiaries to share in the profits of the employer's trade or business, or in the profits of an affiliated employer who is entitled to deduct his contributions to the plan under section 404 (a) (3) (B) pursuant to a definite formula for allocating the contributions and for distributing the funds accumulated under the plan (see paragraph (b) (1) (ii) of this section) and

(iii) In the case of a stock bonus plan, to provide employees or their beneficiaries benefits similar to those of profit-sharing plans, except that such benefits are distributable in stock of the employer, and that the contributions by the employer are not necessarily dependent upon profits. If the employer's contributions are dependent upon profits, the plan may enable employees or their beneficiaries to share not only in the profits of the employer, but also in the profits of an affiliated employer who is entitled to deduct his contributions to the plan under section 404 (a) (3) (B) (see paragraph (b) (1) (iii) of this section)

(3) In order for a trust forming part of a pension, profit-sharing, or stock bonus plan to constitute a qualified trust under section 401 (a) the following tests must be met:

(i) It must be created or organized in the United States, as defined in section 7701 (a) (9) and it must be maintained at all times as a domestic trust in the United States;

(ii) It must be part of a pension, profit-sharing, or stock bonus plan established by an employer for the exclusive benefit of his employees or their beneficiaries (see paragraph (b) (2) through (5) of this section),

(iii) It must be formed or availed of for the purpose of distributing to the employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with the plan;

(iv) It must be impossible under the trust instrument at any time before the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries (see § 1.401–2)

(v) It must be part of a plan which benefits prescribed percentages of the employees, or which benefits such employees as qualify under a classification set up by the employer and found by the Commissioner not to be discriminatory in favor of certain specified classes of employees (see § 1.401–3) and

(vi) It must be part of a plan under which contributions or benefits do not discriminate in favor of certain specified classes of employees (see § 1.401–4)

(b) *General rules.* (1) (i) A pension plan within the meaning of section 401 (a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. Retirement benefits generally are measured by, and based on, such factors as years of service and compensation received by the employees. The determination of the amount of retirement benefits and the contributions to provide such benefits are not dependent upon profits. Benefits are not definitely determinable if funds arising from forfeitures on termination of service, or other reason, may be used to provide increased benefits for the remaining participants instead of being used to reduce the amount of contributions by the employer. A plan designed to provide benefits for employees or their beneficiaries to be paid upon retirement or over a period of years after retirement will, for the purposes of section 401 (a) be considered a pension plan if the employer contributions under the plan can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits.

(ii) A profit-sharing plan is a plan established and maintained by an employer to provide for the participation in his profits by his employees or their beneficiaries. The plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, or severance of employ-

ment. A formula for allocating the contributions among the participants is definite if, for example, it provides for an allocation in proportion to the basic compensation of each participant. A plan (whether or not it contains a definite predetermined formula for determining the profits to be shared with the employees) does not qualify under section 401 (a) if the contributions to the plan are made at such times or in such amounts that the plan in operation discriminates in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. For the rules with respect to discrimination, see §§ 1.401–3 and 1–401–4.

(iii) A stock bonus plan is a plan established and maintained by an employer to provide benefits similar to those of a profits-sharing plan, except that the contributions by the employer are not necessarily dependent upon profits and the benefits are distributable in stock of the employer company. For the purpose of allocating and distributing the stock of the employer which is to be shared among his employees or their beneficiaries, such a plan is subject to the same requirements as a profit-sharing plan.

(iv) A stock bonus, pension, or profit-sharing plan described in section 401 (a) does not include any plan which is primarily a dismissal wage plan.

(v) As to inclusion of full-time life insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20)

(2) The term "plan" implies a permanent as distinguished from a temporary program. Thus, although the employer may reserve the right to change or terminate the plan, and to discontinue contributions thereunder, the abandonment of the plan for any reason other than business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program for the exclusive benefit of employees in general. Especially will this be true if, for example, a pension plan is abandoned soon after pensions have been fully funded for persons in favor of whom discrimination is prohibited under section 401 (a) The permanency of the plan will be indicated by all of the surrounding facts and circumstances, including the likelihood of the employer's ability to continue contributions as provided under the plan. In the event a plan is abandoned, the employer should promptly notify the district director, stating the circumstances which led to the discontinuance of the plan.

(3) If the plan is so designed as to amount to a subterfuge for the distribution of profits to shareholders, it will not qualify as a plan for the exclusive benefit of employees even though other employees who are not shareholders are also included under the plan. The plan must benefit the employees in general, although it need not provide benefits for all of the employees. Among the employees to be benefited may be persons who are officers and shareholders. However, a plan is not for the exclusive benefit of employees in general if, by any device whatever, it discriminates either in eligibility requirements, contributions, or benefits in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees. See section 401 (a) (3) (4), and (5) Similarly, a stock bonus or profit-sharing plan is not a plan for the exclusive benefit of employees in general if the funds therein may be used to relieve the employer from contributing to a pension plan operating concurrently and covering the same employees. All of the surrounding and attendant circumstances and the details of the plan will be indicative of whether it is a bona fide stock bonus, pension, or profit-sharing plan for the exclusive benefit of employees in general. The law is concerned not so much with the form of any plan as it is with its effects in operation. For example, section 401 (a) (5) specifies certain provisions which of themselves are not discriminatory. However, this does not mean that a plan containing these provisions may not be discriminatory in actual operation.

(4) A plan is for the exclusive benefit of employees or their beneficiaries even though it may cover former employees as well as present employees and employees who are temporarily on leave, as, for example, in the Armed Forces of the United States. A plan covering only former employees may qualify under section 401 (a) if it complies with the provisions of section 401 (a) (3) (B), with respect to coverage, and section 401 (a) (4) with respect to contributions and benefits, as applied to all of the former employees. The term "beneficiaries" of an employee within the meaning of section 401 includes the estate of the employee, dependents of the employee, persons who are the natural objects of the employee's bounty, and any persons designated by the employee to share in the benefits of the plan after the death of the employee.

(5) (i) No specific limitations are provided in section 401 (a) with respect to investments which may be made by the trustees of a trust qualifying under section 401 (a) Generally, the contributions may be used by the trustees to purchase any investments permitted by the trust agreement to the extent allowed by local law. However, such a trust will be subject to tax under section 511 with respect to any "unrelated business taxable income" (as defined in section 512) realized by it from its investments. Furthermore, the tax-exempt status of the trust will be forfeited if the investments made by the trustees constitute "prohibited transactions" within the meaning of section 503. See also the regulations under such sections.

(ii) Where the trust funds are invested in stock or securities of, or loaned to, the employer or other person described in section 503 (c) full disclosure must be made of the reasons for such arrangement and of the conditions under which such investments are made in order that a determination may be made whether the trust serves any purpose other than constituting part of a plan for the exclusive benefit of employees.

(c) *Portions of years.* A qualified status must be maintained throughout the entire taxable year of the trust in order for the trust to obtain any exemption for such year. But see section 401 (a) (6) and § 1.401–3.

(d) *Affiliated corporations.* A trust forming part of a plan of affiliated corporations for their employees will be qualified if all the requirements are otherwise satisfied.

(e) *Proof as to qualification.* A trust which qualifies under section 401 (a) and which is exempt under section 501 (a) must file a return in accordance with section 6033 and the regulations thereunder. In addition, to establish its right to qualification, such a trust must file with its return either the information required by § 1.404 (a)–2 or the following information:

(1) The names and addresses of the parties to the trust agreement and the date thereof;

(2) The taxable year involved;

(3) A copy of the employer's notification to the trustee either that he has filed the information required by § 1.404 (a)–2 or that he has filed the statement required under § 1.404 (a)–2 (d) and

(4) The office of the district director in which the employer files his returns.

§ 1.401–2 *Impossibility of diversion under the trust instrument.*—(a) *In general.* (1) Under section 401 (a) (2) a trust is not qualified unless under the trust instrument it is impossible (in the taxable year and at any time thereafter before the satisfaction of all liabilities to employees or their beneficiaries covered by the trust) for any part of the trust corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of such employees or their beneficiaries.

(2) As used in section 401 (a) (2) the phrase "if under the trust instrument it is impossible" means that the trust instrument must definitely and affirmatively make it impossible for the nonexempt diversion or use to occur, whether by operation or natural termination of the trust, by power of revocation or amendment, by the happening of a contingency, by collateral arrangement, or by any other means. Although it is not essential that the employer relinquish all power to modify or terminate the rights of certain employees covered by the trust, it must be impossible for the trust funds to be used or diverted for purposes other than for the exclusive benefit of his employees or their beneficiaries.

(3) As used in section 401 (a) (2) the phrase "purposes other than for the exclusive benefit of his employees or their beneficiaries" includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees or their beneficiaries covered by the trust.

(b) *Meaning of "liabilities"* (1) The intent and purpose in section 401 (a) (2) of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of

the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions as to mortality, interest, etc., and correct procedures relating to the method of funding. For example, a trust has accumulated assets of $1,000,000 at the time of liquidation, determined by acceptable actuarial procedures using reasonable assumptions as to interest, mortality, etc., as being necessary to provide the benefits in accordance with the provisions of the plan. Upon such liquidation it is found that $950,000 will satisfy all of the liabilities under the plan. The surplus of $50,000 arises, therefore, because of the difference between the amounts actuarially determined and the amounts actually required to satisfy the liabilities. This $50,000, therefore, is the amount which may be returned to the employer as the result of an erroneous actuarial computation. If, however, the surplus of $50,000 had been accumulated as a result of a change in the benefit provisions or in the eligibility requirements of the plan, the $50,000 could not revert to the employer because such surplus would not be the result of an erroneous actuarial computation.

(2) The term "liabilities" as used in section 401 (a) (2) includes both fixed and contingent obligations to employees. For example, if 1,000 employees are covered by a trust forming part of a pension plan, 300 of whom have satisfied all the requirements for a monthly pension, while the remaining 700 employees have not yet completed the required period of service, contingent obligations to such 700 employees have nevertheless arisen which constitute "liabilities" within the meaning of that term. It must be impossible for the employer (or other nonemployee) to recover any amounts other than such amounts as remain in the trust because of "erroneous actuarial computations" after the satisfaction of all fixed and contingent obligations. Furthermore, the trust instrument must contain a definite affirmative provision to this effect, irrespective of whether the obligations to employees have their source in the trust instrument itself, in the plan of which the trust forms a part, or in some collateral instrument or arrangement forming a part of such plan, and regardless of whether such obligations are, technically speaking, liabilities of the employer, of the trust, or of some other person forming a part of the plan or connected with it.

§ 1.401–3 *Requirements as to coverage.* (a) (1) In order to insure that stock bonus, pension, and profit-sharing plans are utilized for the welfare of employees in general, and to prevent the trust device from being used for the principal benefit of shareholders, officers, persons whose principal duties consist in supervising the work of other employees, or highly paid employees, or as a means of tax avoidance, a trust will not be qualified unless it is part of a plan which satisfies the coverage requirements of section 401 (a) (3) The percentage requirements in section 401 (a) (3) (A) refer to a percentage of all the active employees, including employees temporarily on leave, such as those in the Armed Forces of the United States, if such employees are eligible under the plan.

(2) The application of section 401 (a) (3) (A) may be illustrated by the following example:

Example. An employer adopts a plan at a time when he has 1,000 employees. The plan provides that all full-time employees who have been employed by him for a period of two years and have reached the age of 30 shall be eligible to participate. The plan also requires participating employees to contribute 3 percent of their monthly pay. At the time the plan is made effective 100 of the 1,000 employees had not been employed for a period of two years. Fifty of the employees were seasonal employees whose customary employment did not exceed five months in any calendar year. Twenty-five of the employees were part-time employees whose customary employment did not exceed 20 hours in any one week. One hundred and fifty of the full-time employees who had been employed for two years or more had not yet reached age 30. The requirements of section 401 (a) (3) (A) will be met if 540 employees are covered by the plan, as shown by the following computation:

(i) Total employees with respect to whom the percentage requirements are applicable (1,000 minus 175 (100 plus 50 plus 25))	825
(ii) Employees not eligible to participate because of age requirements	150
(iii) Total employees eligible to participate	675
(iv) Percentage of employees in item (i) eligible to participate	81+%
(v) Minimum number of participating employees to qualify the plan (80 percent of 675)	540

If only 70 percent, or 578, of the 825 employees satisfied the age and service requirements, then 462 (80 percent of 578) participating employees would satisfy the percentage requirements.

(b) If a plan fails to qualify under the percentage requirements of section 401 (a) (3) (A) it may still qualify under section 401 (a) (3) (B) provided always that (as required by section 401 (a) (3) and (4)) the plan's eligibility conditions, benefits, and contributions do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees.

(c) Section 401 (a) (5) sets out certain classifications that will not in themselves be considered discriminatory. However, those so designated are not intended to be exclusive. Thus, plans may qualify under section 401 (a) (3) (B) even though coverage thereunder is limited to employees who have either reached a designated age or have been employed for a designated number of years, or who are employed in certain designated departments or are in other classifications, provided the effect of covering only such employees does not discriminate in favor of officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees. For example, if there are 1,000 employees, and the plan is written for only salaried employees, and consequently only 500 employees are covered, that fact alone will not justify the conclusion that the plan does not meet the coverage requirements of section 401 (a) (3) (B) Conversely, if a contributory plan is offered to all of the employees but the contributions required of the employee participants are so burdensome as to make the plan acceptable only to the highly paid employees, the classification will be considered discriminatory in favor of such highly paid employees.

(d) (1) Section 401 (a) (5) contains a provision to the effect that a classification shall not be considered discriminatory within the meaning of section 401 (a) (3) (B) merely because all employees whose entire annual remuneration constitutes "wages" under section 3121 (a) (1) (for purposes of the Federal Insurance Contributions Act) are excluded from the plan. A reference to section 3121 (a) (1) for years after 1954 shall be deemed a reference to section 1426 (a) (1) for years before 1955. This provision, in conjunction with section 401 (a) (3) (B) is intended to permit the qualification of plans which supplement the old-age and survivor insurance benefits under the Social Security Act. Thus, a classification which excludes all employees whose entire remuneration constitutes "wages" under section 3121 (a) (1) will not be considered discriminatory merely because of such exclusion. Similarly, a plan which includes all employees will not be considered discriminatory solely because the contributions or benefits based on that part of their remuneration which is excluded from wages under section 3121 (a) (1) differ from the contributions or benefits based on that part of their remuneration which is not so excluded. However, in making his determination with respect to discrimination in classification under section 401 (a) (3) (B) the Commissioner will consider whether the total benefits resulting to each employee under the plan and under the Social Security Act, or under the Social Security Act only, establish an integrated and correlated retirement system satisfying the tests of section 401 (a) If, therefore, a classification of employees under a plan results in relatively or proportionately greater benefits for employees earning above any specified salary amount or rate than for those below any such salary amount or rate, it may be found to be discriminatory within the meaning of section 401 (a) (3) (B) If, however, the relative or proportionate differences in benefits which result from such classification are approximately offset by the old-age and survivor insurance benefits which are provided by the Social Security Act and which are not attributable to employee contributions under the Federal Insurance Contributions Act, the plan will be considered to be

properly integrated with the Social Security Act and will, therefore, not be considered discriminatory.

(2) In determining whether a plan is properly intergrated with the Social Security Act, the total old-age and survivor insurance benefits with respect to an employee are considered to be 150 percent of the employee's old-age insurance benefits under such act, and the proportion of such total benefits which is attributable to employee contributions is considered to be approximately 20 percent of such total benefits. These assumptions take into consideration the changes made by the Social Security Amendments of 1954. Thus, for example, a classification of employees under a noncontributory pension or annuity plan established in 1955 which is limited to employees earning in excess of $4,200 a year will not be considered discriminatory within the meaning of section 401 (a) (3) (B), if:

(i) Normal annual retirement benefits for any employee cannot exceed 37½ percent of his average annual compensation in excess of $4,200, where average annual compensation is defined to mean the average annual compensation over the highest five consecutive years.

(ii) There are no benefits payable in case of death before retirement.

(iii) The normal form of retirement benefit is a straight life annuity, and if there are optional forms, the benefit payments are adjusted so that the total value of the optional form is the same as the value of the normal form of retirement benefits.

(iv) Normal retirement benefits for employees who reach normal retirement age before completion of 15 years of service with the employer cannot exceed 2½% of average annual compensation in excess of $4,200 for each year of service.

(v) Normal retirement age is not lower than age 65 for men and not lower than age 60 for women.

(vi) Benefits payable in case of retirement or severance of employment before normal retirement age cannot exceed the actuarial equivalent of that proportion of the normal retirement benefits earned to the date of actual retirement or severance, where such proportion is determined by the ratio that the actual number of years of service of the employee at retirement or severance bears to the total number of years of service he would have had if he had remained in service until normal retirement age.

In the case of a plan limited to employees earning over $4200 a year but providing different benefits, or providing benefits related to years of service, or providing benefits purchasable by stated employer contributions, or under which the employees contribute, or providing a combination of the foregoing variations, the plan will be considered to be properly integrated only if, as determined by the Commissioner, the benefits provided thereunder by employer contributions cannot exceed in value the benefits described in the example. Similar principles will govern in determining whether a plan is properly integrated if it is limited to employees whose compensation exceeds a stated level other than $4200 a year, or if it bases benefits on contributions on compensation in excess of such a level, or if it provides for an offset of benefits otherwise payable under the plan on account of old-age and survivor insurance benefits. In the case of a plan which is properly integrated with old-age and survivor insurance benefits as in effect before the Social Security Amendments of 1954, and which is limited to employees earning in excess of a stated level, no adjustment is required merely because of the changes made by such Amendments.

(3) A plan supplementing the Social Security Act and excluding all employees whose entire annual remuneration constitutes "wages" under section 3121 (a) (1) will not, however, be deemed discriminatory merely because, for administrative convenience, it provides a reasonable minimum benefit not to exceed $20 a month.

(4) Similar considerations, to the extent applicable in any case, will govern classifications under a plan supplementing the benefits provided by other Federal or State laws. See section 401 (a) (5)

(e) An employer may designate several trusts or a trust or trusts and an annuity plan or plans as constituting one plan which is intended to qualify under section 401 (a) (3), in which case all of such trusts and plans taken as a whole may meet the requirements of such section. The fact that such combination of trusts and plans fails to qualify as one plan does not prevent such of the trusts and plans as qualify from meeting the requirements of section 401 (a)

(f) It is provided in section 401 (a) (6) that a plan will satisfy the requirements of section 401 (a) (3), if on at least one day in each quarter of the taxable year of the plan it satisfies such requirements. This makes it possible for a new plan requiring contributions from employees to qualify if by the end of the quarter-year in which the plan is adopted it secures sufficient contributing participants to meet the requirements of section 401 (a) (3). It also affords a period of time in which new participants may be secured to replace former participants, so as to meet the requirements of either subparagraph (A) or (B) of section 401 (a) (3).

§ 1.401–4 *Discrimination as to contributions or benefits.* (a) (1) (i) In order to qualify under section 401 (a), a trust must not only meet the coverage requirements of section 401 (a) (3) but, as provided in section 401 (a) (4), it must also be part of a plan under which there is no discrimination in contributions or benefits in favor of officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees as against other employees whether within or without the plan.

(ii) Funds in a stock bonus or profit-sharing plan arising from forfeitures on termination of service, or other reason, must not be allocated to the remaining participants in such manner as will effect the prohibited discrimination. With respect to forfeitures in a pension plan, see § 1.401–1 (a)

(2) (i) Section 401 (a) (5) sets out certain provisions which will not in and of themselves be discriminatory within the meaning of section 401 (a) (3) or (4) See § 1.401–3. Thus, a plan will not be considered discriminatory merely because the contributions or benefits bear a uniform relationship to total compensation or to the basic or regular rate of compensation, or merely because the contributions or benefits based on that part of the annual compensation of employees which is subject to the Federal Insurance Contributions Act differ from the contributions or benefits based on any excess of such annual compensation over such part.

(ii) The exceptions specified in section 401 (a) (5) are not an exclusive enumeration, but are merely a recital of provisions frequently encountered which will not of themselves constitute forbidden discrimination in contributions or benefits.

(iii) Variations in contributions or benefits may be provided so long as the plan, viewed as a whole for the benefit of employees in general, with all its attendant circumstances, does not discriminate in favor of employees within the enumerations with respect to which discrimination is prohibited. Thus, benefits in a stock bonus or profit-sharing plan which vary by reason of a distribution formula which takes into consideration years of service, or other factors, are not prohibited unless they discriminate in favor of such employees.

(b) A plan which excludes all employees whose entire remuneration constitutes wages under section 3121 (a) (1) (relating to the Federal Insurance Contributions Act), or a plan under which the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" under such act differs from the contributions or benefits based on that part of the employee's remuneration which is not so excluded, or a plan under which the contributions or benefits differ because of any retirement benefit created under State or Federal law, will not be discriminatory because of such exclusion or difference, provided the total benefits resulting under the plan and under such law establish an integrated and correlated retirement system satisfying the tests of section 401 (a).

(c) Although a plan may provide for termination at will by the employer, this will not of itself prevent a trust from being a qualified trust. However, in certain cases that fact may necessitate some provision in the plan which will preclude such termination from effecting the prohibited discrimination. This may occur where, for example, certain officers or highly compensated employees are at the inception of the plan within a few years of retirement age and the operation of the plan will fund and vest their benefits in a short period, thus resulting in such discrimination in favor of such officers or hightly compensated employees.

§ 1.401–5 *Period for which requirements of section 401 (a) (3), (4) (5)*

and (6) are applicable. A pension, profit-sharing, stock bonus, or annuity plan shall be considered as satisfying the requirements of section 401 (a) (3), (4) (5) and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put into effect, if all the provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. Thus, if an employer in 1954 adopts such a plan as of January 1, 1954, and makes a return on the basis of the calendar year, he will have until March 15, 1955, to amend his plan so as to make it satisfy the requirements of section 401 (a) (3) (4) (5) and (6) for the calendar year 1954 provided that by March 15, 1955, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1954, the effective date of the plan. If an employer is on a fiscal year basis, for example, April 1 to March 31, and in 1954 adopts such a plan effective as of April 1, 1954, he will have until June 15, 1955, to amend his plan so as to make it satisfy the requirements of section 401 (a) (3) (4) (5), and (6) for the fiscal year beginning April 1, 1954, provided that by June 15, 1955, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to April 1, 1954, the effective date of the plan. It should be noted that under section 401 (b) the period in which a plan may be amended to qualify under section 401 (a) ends before the date on which taxpayers other than corporations are required to file income tax returns. See section 6072.

§ 1.402 (a) *Statutory provisions; taxability of beneficiary of employees' trust; exempt trust.*

SEC. 402. *Taxability of beneficiary of employees' trust*—(a) *Taxability of beneficiary of exempt trust*—(1) *General rule.* Except as provided in paragraph (2), the amount actually distributed or made available to any distributee by any employees' trust described in section 401 (a) which is exempt from tax under section 501 (a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(2) *Capital gains treatment for certain distributions.* In the case of an employees' trust described in section 401 (a), which is exempt from tax under section 501 (a), if the total distributions payable with respect to any employee are paid to the distributee within 1 taxable year of the distributee on account of the employee's death or other separation from the service, or on account of the death of the employee after his separation from the service, the amount of such distribution, to the extent exceeding the amounts contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(3) *Definitions.* For purposes of this subsection—

(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 421 (d) (2) and (3)) of the employer corporation.

(C) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service, or on account of his death after separation from the service.

§ 1.402 (a)-1 *Taxability of beneficiary under a trust which meets the requirements of section 401 (a)*—(a) *In general.* (1) (i) Section 402 relates to the taxation of the beneficiary of an employees' trust. If an employer makes a contribution for the benefit of an employee to a trust described in section 401 (a) for the taxable year of the employer which ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a) the employee is not required to include such contribution in his income except for the year or years in which such contribution is distributed or made available to him. It is immaterial in the case of contributions to an exempt trust whether the employee's rights in the contributions to the trust are forfeitable or nonforfeitable either at the time the contribution is made to the trust or thereafter.

(ii) The provisions of section 402 (a) relate only to a distribution by a trust described in section 401 (a) which is exempt under section 501 (a) for the taxable year of the trust in which the distribution is made. The distribution from such an exempt trust when received or made available is taxable to the distributee to the extent provided in section 72 (relating to annuities) except that section 72 (e) (3) (relating to the treatment of certain lump sums) shall not apply, and except that certain total distributions described in section 402 (a) (2) are taxable as long-term capital gains. For the treatment of such total distributions, see subparagraph (6) of this paragraph. Under certain circumstances, an amount representing the unrealized appreciation in the value of the securities of the employer is excludable from gross income for the year of distribution. For the rules relating to such exclusion, see paragraph (b) of this section.

(iii) If a trust is exempt for the taxable year in which the distribution occurs, but was not so exempt for one or more prior taxable years under section 501 (a) (or under section 165 (a) of the Internal Revenue Code of 1939 for years to which such section was applicable), the contributions of the employer which were includible in the gross income of the employee for the taxable year when made shall, in accordance with section 72 (f), also be treated as part of the consideration paid by the employee.

(iv) If the trust is not exempt at the time the distribution is received by or made available to the employee, see section 402 (b) and § 1.402 (b)-1 (b).

(2) If a trust described in section 401 (a) and exempt under section 501 (a) purchases an annuity contract for an employee and distributes it to the employee in a year for which the trust is exempt, the contract containing a cash surrender value which may be available to an employee by surrendering the contract, such cash surrender value will not be considered income to the employee unless and until the contract is surrendered. If, however, the contract distributed by such an exempt trust is a retirement income, endowment, or other life insurance contract, the entire value of such contract at the time of distribution must be included in the distributee's income in accordance with the provisions of section 402 (a) except to the extent that, within the time prescribed in section 72 (h) all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101 (a) (relating to life insurance proceeds).

(3) (i) If a trust described in section 401 (a) and exempt under section 501 (a) purchases under the plan life insurance contracts, or retirement income contracts with life insurance protection, payable upon the death of the employee participants, and either—

(*a*) The proceeds of such life insurance are payable to a beneficiary of the employee participant, other than the trust, or

(*b*) In case such proceeds are payable to the trust, by the terms of the plan the trustee is required to pay over all of such proceeds to a beneficiary of the employee participant,

then, the portion of the premiums paid for the life insurance protection from either the contributions of the employer or earnings of the trust will constitute income to the employee for the year or years in which the contributions or earnings are applied toward the purchase of such life insurance. If the amount payable upon death at any time during the year exceeds the cash value of the insurance policy at the end of the year, the entire amount of such excess will be considered current life insurance protection. The cost of such insurance will be considered to be the net premium cost for such amount for the appropriate period, based upon the rates of the company issuing the contract.

(ii) The determination of the cost of life insurance protection may be illustrated by the following example:

Example. A policy is purchased under a qualified plan for an employee 35 years of age, providing an annuity of $100 per month upon retirement at age 65, with a minimum death benefit of $10,000. The level annual premium for the policy is $436.40. The insurance payable if death occurred in the first year would be $10,000. The cash value at the end of the first year is 0. The net insurance is therefore $10,000 minus 0, or $10,000. Assuming that the gross 1-year term premium less dividend for the same insurance company is $3.75 per $1,000, the premium for $10,000 of life insurance is therefore $37.50, and this is the amount to be reported as income by the employee for the year. The balance of $398.90 is the amount contributed for the annuity, which is not taxable to the employee under a plan meeting the requirements of section 401 (a), except as provided under section 402 (a). Assuming that the cash value at the end of the second year is $480, the net insurance would then be $9,520 for the second year. With a net 1-year term rate of $4.00 (age 36), the amount to be reported as income to the employee would be $38.08.

(iii) This subparagraph shall not apply to the extent that the trust has a right under any circumstances to retain any part of the proceeds of the life insurance contract. But see subparagraph (4) (iii) relating to the taxability of the distribution of such proceeds to a beneficiary.

(4) (i) If a trust described in section 401 (a) and exempt under section 501 (a) has purchased a retirement income contract, an endowment contract, or other life insurance contract, and subparagraph (3) is applicable, or an annuity contract, the following rules govern the taxability of the benefits payable on the death of an employee participant, except in the case of a joint and survivor annuity.

(*a*) In the case of an annuity contract, the death benefit is the accumulation of the premiums paid wholly or partly from employer contributions (plus earnings thereon) which is intended to fund pension or other deferred benefits under a pension or profit-sharing plan, and as to which the inclusion in income has been deferred. Such death benefits are not in the nature of life insurance and are not excludable from gross income under section 101 (a)

(*b*) In the case of a retirement income or other endowment or life insurance contract, there is a reserve accumulation derived wholly or partly from employer contributions (plus earnings thereon) as to which the inclusion in income has been deferred. This reserve constitutes the source of the cash value of the contract, and approximates the amount of such cash value. The portion of the proceeds paid upon the death of the insured employee which is equal to the cash value just before death is not excludable from gross income under section 101 (a) The remaining portion, if any, of the proceeds paid to the beneficiary by reason of the death of the insured employee—that is, the amount in excess of the cash value—constitutes current insurance protection and is excludable under section 101 (a)

(*c*) The death benefit under an annuity contract, or the portion of the death proceeds under a retirement income, endowment, or life insurance contract which is equal to the cash value of the contract, constitutes a distribution from the trust which is taxable to the beneficiary in accordance with section 402 (a) except to the extent that the limited exclusion from income provided in section 101 (b) is applicable.

(*d*) In case of a retirement income, endowment, or life insurance contract under which the benefits are paid at a date or dates later than the death of the employee, section 101 (d) is applicable only to the portion of the benefits which is attributable to the amount excludable under section 101 (a) The portion of such benefits which is attributable to the cash value of the contract just before death is taxable under section 72 (relating to annuities) and in such case, any amount excludable under section 101 (b) is treated as additional consideration paid by the employee in accordance with section 101 (b) (2) (D).

(ii) The application of the rules under subdivision (i) with respect to the taxability of proceeds of a retirement income, endowment, or life insurance contract paid by reason of the death of an insured employee who has paid no contributions under the plan is illustrated by the following examples:

Example (1).

Total face amount of the contract at time of death	$25,000
Cash value of the contract just before death	11,000
Excess over cash value, excludable under section 101 (a)	14,000
Cash value subject to limited exclusion under section 101 (b)	11,000
Excludable under section 101 (b) (assuming that in this case the employee's rights in such cash value, immediately before his death, were forfeitable at least to the extent of $5,000, and that there is no other death benefit paid by or on behalf of any employer with respect to the employee)	5,000
Balance taxable in accordance with section 402 (a)	6,000

Example (2). The facts are the same as in example (1); and in addition, the contract provides that the beneficiary may elect within 60 days after the death of the employee either to take the $25,000 or to receive 10 annual installments of $3,000 each. The beneficiary elects to receive the 10 installments. Section 101 (d) is applicable to the amount excludable under section 101 (a), that is, $14,000. The portion of each annual installment of $3,000 which is attributable to this $14,000 is determined by allocating each installment in accordance with the ratio which this $14,000 bears to the total amount which was payable at death ($25,000). Accordingly, the portion of each annual installment which is subject to section 101 (d) is $1,680 (14/25 of $3,000), of which, $1,400 (1/10 of $14,000) is excludable under section 101 (a), and the remaining $280 is includible in the gross income of the beneficiary. However, if the beneficiary is a surviving spouse as defined in section 101 (d) (3), the exclusion provided by section 101 (d) (1) (B) is applicable to such $280. The remaining portion of each annual $3,000 installment, $1,320, is attributable to the cash value of the contract and is treated under section 72, as follows:

Investment in the contract (excludable under section 101 (b))	$5,000
Expected return, 10×$1,320	13,200
Exclusion ratio, $5,000--$13,200	.379
Annual exclusion, 0.379×$1,320	500

Accordingly, $500 of the $1,320 portion of each annual installment is excludable each year under section 72, and the remaining $820 is includible. Thus, if the beneficiary is not a surviving spouse, a total of $1,100 ($280 plus $820) of each annual $3,000 installment is includible in income each year. If the beneficiary is a surviving spouse, and can exclude all of the $280 under section 101 (d) (1) (B), the amount includible in gross income each year is $820.

(iii) If, under a plan to which subparagraph (3) is not applicable, the trust pays a death benefit to the beneficiaries of an employee participant, such death benefit will be taxable to the beneficiaries under section 402 (a) and no portion thereof will be excludable under section 101 (a) However, under section 101 (b) a limited exclusion may be allowable with respect to such death benefit.

(5) If pension or annuity payments or other benefits (other than certain total distributions described in paragraph (a) (6) of this section) are paid or made available to the beneficiary of a deceased employee or a deceased retired employee by a trust described in section 401 (a) which is exempt under section 501 (a) such amounts must be included in the beneficiary's income under section 72, except that section 72 (e) (3) does not apply. The "investment in the contract," for the purpose of section 72, shall be determined by reference to the amount contributed by the employee and by applying the rules of sections 72 (c), 72 (f), and 101 (b) (2) (D)

(6) (i) If the total distributions payable with respect to any employee under a trust which in the year of distribution is exempt under section 501 (a) are paid to the distributee within one taxable year of the distributee on account of the employee's death or other separation from the service, or death after such separation from service, the amount of such distribution, to the extent it exceeds the amount contributed by the employee and the amount excludable under section 101 (b) in the case of a death, shall be considered a gain from the sale or exchange of a capital asset held for more than six months. For rules relating to the treatment of such distribution in the case of a nonresident alien individual, see sections 871 and 1441 and the regulations thereunder. In determining such excess, "the amount contributed by the employee" is the net amount of employee contributions (determined by applying the rules of section 72 (f)) reduced by any amounts theretofore distributed to him which were not includible in gross income. See, however, paragraph (b) of this section for rules relating to exclusion from such excess of amounts representing net unrealized appreciation in the value of securities of the employer corporation.

(ii) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service or on account of his death

after separation from the service. Thus, distributions made before a total distribution (for example, annuity payments received by the employee after retirement) will not defeat application of the capital gains treatment with respect to the total distributions received by a beneficiary upon the death of the employee. Similarly, in the case of a profit-sharing plan under which an employee receives 50 percent of the amount in his account on separation from service and the balance is paid to his estate or named beneficiary on death, the capital gains treatment is applicable to the balance paid on death if paid within 1 taxable year of the distributee. The distribution on separation from service, however, would not receive capital gains treatment since the balance to the credit of the employee means the total amount in his account on separation from service. Also, if an employee retires and commences to receive an annuity but subsequently, in some succeeding taxable year, is paid a lump sum in settlement of all future annuity payments, the capital gains treatment does not apply to such lump sum settlement paid during the lifetime of the employee since it is not a payment on account of separation from the service, or death after separation, but is on account of the settlement of future annuity payments.

(iii) For regulations as to certain plan terminations, see § 1.402 (e)–1.

(b) *Distributions including securities of the employer corporation*—(1) *In general.* (i) If a trust described in section 401 (a) which is exempt under section 501 (a) makes a distribution to a distributee, and such distribution includes securities of the employer corporation, the amount of any net unrealized appreciation in such securities shall be excluded from the distributee's income in the year of such distribution to the following extent:

(*a*) If the distribution constitutes a total distribution to which the rules of paragraph (a) (6) of this section are applicable, the amount to be excluded is the entire net unrealized appreciation attributable to that part of the total distribution which consists of securities of the employer corporation; and

(*b*) If the distribution is other than a total distribution to which paragraph (a) (6) of this section is applicable, the amount to be excluded is that portion of the net unrealized appreciation in the securities of the employer corporation which is attributable to the amount considered to be contributed by the employee to the purchase of such securities.

The amount of net unrealized appreciation which is excludable under the rules of subdivisions (*a*) and (*b*) of this subparagraph shall not be included in the basis of the securities in the hands of the distributee at the time of distribution for purposes of determining gain or loss on their subsequent disposition. In the case of a total distribution the amount of net unrealized appreciation which is not included in the basis of the securities in the hands of the distributee at the time of distribution shall be considered as a gain from the sale or exchange of a capital asset held for more than six months to the extent that such appreciation is realized in a subsequent taxable transaction. However, if the net gain realized by the distributee in a subsequent taxable transaction exceeds the amount of the net unrealized appreciation at the time of distribution, such excess shall constitute a long-term or short-term capital gain depending upon the holding period of the securities in the hands of the distributee.

(ii) For purposes of section 402 (a) and of this section, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 421 (d) (2) and (3) relating to employee stock options) of the employer corporation.

(2) *Determination of net unrealized appreciation.* (i) The amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust. Thus, if a distribution consists in part of securities which have appreciated in value and in part of securities which have depreciated in value, the net unrealized appreciation shall be considered to consist of the net increase in value of all of the securities included in the distribution. For this purpose, two or more distributions made by a trust to a distributee in a single taxable year of the distributee shall be treated as a single distribution.

(ii) For the purpose of determining the net unrealized appreciation on a distributed security of the employer corporation, the cost or other basis of such security to the trust shall be computed in accordance with whichever of the following rules is applicable:

(*a*) If a security was earmarked for the account of a particular employee at the time it was purchased by or contributed to the trust so that the cost or other basis of such security to the trust is reflected in the account of such employee, such cost or other basis shall be used.

(*b*) If as of the close of each taxable year of the trust (or other specified period of time not in excess of 12 consecutive calendar months) the trust allocates among the accounts of participating employees all securities acquired by the trust during the period (exclusive of securities unallocated under a plan providing for allocation in whole shares only) the cost or other basis to the trust of any securities allocated as of the close of a particular allocation period shall be the average cost or other basis to the trust of all securities of the same type which were purchased or otherwise acquired by the trust during such allocation period. For purposes of determining the average cost to the trust of securities included in a subsequent allocation, the actual cost to the trust of the securities unallocated as of the close of a prior allocation period shall be deemed to be the average cost or other basis to the trust of securities of the same type allocated as of the close of such prior allocation period.

(*c*) In a case where neither (*a*) nor (*b*) of this subdivision is applicable, if the trust fund, or a specified portion thereof, is invested exclusively in one particular type of security of the employer corporation, and if during the period the distributee participated in the plan none of such securities has been sold except for the purpose of paying benefits under the trust or for the purpose of enabling the trustee to obtain funds with which to exercise rights which have accrued to the trust, the cost or other basis to the trust of all securities distributed to such distributee shall be the total amount credited to the account of such distributee (or such portion thereof as was available for investment in such securities) reduced by the amount available for investment but uninvested on the date of distribution. If at the time of distribution to a particular distributee a portion of the amount credited to his account is forfeited, appropriate adjustment shall be made with respect thereto in determining the cost or other basis to the trust of the securities distributed.

(*d*) (*1*) In all other cases, there shall be used the average cost (or other basis) to the trust of all securities of the employer corporation of the type distributed to the distributee which the trust has on hand at the time of the distribution, or which the trust had on hand on a specified inventory date which date does not precede the date of distribution by more than twelve calendar months. If a distribution includes securities of the employer corporation of more than one type, the average cost (or other basis) to the trust of each type of security distributed shall be determined. The average cost to the trust of securities of the employer corporation on hand on a specified inventory date (or on hand at the time of distribution) shall be computed on the basis of their actual cost, considering the securities most recently purchased to be those on hand, or by means of a moving average calculated by subtracting from the total cost of securities on hand immediately preceding a particular sale or distribution an amount computed by multiplying the number of securities sold or distributed by the average cost of all securities on hand preceding such sale or distribution.

(2) These methods of computing average cost may be illustrated by the following examples:

Example (*1*). A, a distributee who makes his income tax returns on the basis of a calendar year, receives on August 1, 1954, in a total distribution, to which paragraph (a) (6) of this section is applicable, ten shares of class D stock of the employer corporation. On July 1, 1954 (the specified inventory date of the trust), the trust had on hand 80 shares of class D stock. The average cost of the 10 shares distributed, on the basis

of the actual cost method, is $100 computed as follows:

Shares	Purchase date	Cost per share	Total cost
20	June 24, 1954	$101	$2,020
40	Jan. 10, 1953	102	4,080
20	Oct. 20, 1952	95	1,900
80			8,000

Example (2). B, a distributee who makes his income tax returns on the basis of a calendar year, receives on October 31, 1954, in a total distribution, to which paragraph (a) (6) of this section is applicable, 20 shares of class E stock of the employer corporation. The specified inventory date of the trust is the last day of each calendar year. The trust had on hand on December 31, 1952, 1,000 shares of class E stock of the employer corporation. During the calendar year 1953 the trust distributed to four distributees a total of 100 shares of such stock and acquired, through a number of purchases, a total of 120 shares. The average cost of the 20 shares distributed to B, on the basis of the moving average method, is $52 computed as follows:

	Shares	Total cost	Average cost
On hand Dec. 31, 1952	1,000	$50,000	$50
Distributed during 1953 at average cost of $50	100	5,000	
	900	45,000	
Purchased during 1953	120	8,040	
On hand Dec. 31, 1953	1,020	53,040	52

(3) *Unrealized appreciation attributable to employee contributions.* In any case in which it is necessary to determine the amount of net unrealized appreciation in securities of the employer corporation which is attributable to contributions made by an employee:

(i) The cost or other basis of the securities to the trust and the amount of net unrealized appreciation shall first be determined in accordance with the rules in paragraph (b) (2) of this section;

(ii) The amount contributed by the employee to the purchase of the securities shall be solely the portion of his actual contributions to the trust properly allocable to such securities, and shall not include any part of the increment in the trust fund expended in the purchase of the securities;

(iii) The amount of net unrealized appreciation in the securities distributed which is attributable to the contributions of the employee shall be that proportion of the net unrealized appreciation determined under the rules of subparagraph (2) of this paragraph which the contributions of the employee properly allocable to such securities bear to the cost or other basis to the trust of the securities;

(iv) If a distribution consists solely of securities of the employer corporation, the contributions of the employee expended in the purchase of such securities shall be allocated to the securities distributed in a manner consistent with the principles set forth in subparagraph (2) (ii) (*a*) (*b*) (*c*) or (*d*) of this paragraph, whichever is applicable. Thus, the amount of the employee's contribution which can be identified as having been expended in the purchase of a particular security shall be allocated to such security, and the amount of such contribution which cannot be so identified shall be allocated ratably among the securities distributed. If a distribution consists in part of securities of the employer corporation and in part of cash or other property, appropriate allocation of a portion of the employee's contribution to such cash or other property shall be made unless such allocation is inconsistent with the terms of the plan or trust.

(v) The application of this subparagraph may be illustrated by the following example:

Example. A trust distributes ten shares of stock issued by the employer corporation each of which has an average cost to the trust of $100, consisting of employee contributions in the amount of $60 and employer contributions in the amount of $40, and on the date of distribution has a fair market value of $180. The portion of the net unrealized appreciation attributable to the contributions of the employee with respect to each of the shares of stock is $48 computed as follows:

(1) Value of one share of stock on distribution date	$180
(2) Employee contributions	60
(3) Employer contributions	40
(4) Total contributions	100
(5) Net unrealized appreciation	80
(6) Portion of net unrealized appreciation attributable to employee contributions, $\frac{3}{5}$ths (amount of employee contributions (item 2) over total contributions (item 4) of $60 (item 5))	48

(vi) For the purpose of determining gain or loss to the distributee in the year or years in which any share of stock referred to in the example in subdivision (v) of this subparagraph is sold or otherwise disposed of in a taxable transaction, the basis of each such share in the hands of the distributee at the time of the distribution by the trust will be $132 computed as follows:

(*a*) Employee contributions	$60
(*b*) Employer contributions (taxable as ordinary income in the year the securities were distributed)	40
(*c*) Portion of net unrealized appreciation attributable to employer contributions (item (5) minus item (6)) (taxable as ordinary income in the year the securities were distributed)	32
(*d*) Basis of stock	132

(4) *Change in exempt status of trust.* For principles applicable in making appropriate adjustments if the trust was not exempt for one or more years before the year of distribution, see paragraph (a) of this section.

§ 1.402 (b) *Statutory provisions; taxability of beneficiary of employees' trust; non-exempt trust.*

SEC. 402. *Taxability of beneficiary of employees' trust.* • • •

(b) *Taxability of beneficiary of non-exempt trust.* Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501 (a) shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made. The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities) except that section 72 (e) (3) shall not apply.

§ 1.402 (b)–1 *Treatment of beneficiary of a trust not exempt under section 501 (a)—(a) Taxation by reason of employer contributions.* (1) Generally, any contribution made by an employer on behalf of an employee to a trust during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under section 501 (a) shall be included in income of the employee for his taxable year during which the contribution is made if the employee's beneficial interest in the contribution is nonforfeitable at the time the contribution is made. But see section 402 (d) and § 1.402 (d)–1.

(2) (i) An employee's beneficial interest in the contribution is nonforfeitable within the meaning of sections 402 (b) and 404 (a) (5) at the time the contribution is made if there is no contingency under the plan which may cause the employee to lose his rights in the contribution. For example, if under the terms of a pension plan, an employee upon termination of his services before the retirement date, whether voluntarily or involuntarily, is entitled to a deferred annuity contract to be purchased with the employer's contributions made on his behalf, or is entitled to annuity payments which the trustee is obligated to make under the terms of the trust instrument based on the contributions made by the employer on his behalf, the employee's beneficial interest in such contributions is nonforfeitable.

(ii) On the other hand, if, under the terms of a pension plan, an employee will lose the right to any annuity purchased from, or to be provided by, contributions made by the employer if his services should be terminated before retirement, his beneficial interest in such contributions is forfeitable.

(iii) The mere fact that an employee may not live to the retirement date, or may live only a short period after the retirement date, and may not be able to enjoy the receipt of annuity or pension payments, does not make his beneficial interest in the contributions made by the employer on his behalf forfeitable. If the employer's contributions have been irrevocably applied to purchase an annuity contract for the employee, or if the trustee is obligated to use the employer's contributions to provide an annuity for the employee provided only that the employee is alive on the dates the annuity payments are due, the employee's rights in the employer's contributions are nonforfeitable.

(b) *Taxation of distributions from trust not exempt under section 501 (a).* Any amount actually distributed or made available to any distributee by an employees' trust which is not exempt under

section 501 (a) shall be taxable in the year in which so distributed or made available, under section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. The distributions by such an employees' trust shall be taxed as provided in section 72, whether or not the employee's rights to the contributions were nonforfeitable when the contributions were made or at any time thereafter. For rules relating to the treatment of employer contributions to a non-exempt trust as part of the consideration paid by the employee, see section 72 (f) For rules relating to the treatment of the limited exclusion allowable under section 101 (b) (2) (D) as additional consideration paid by the employee, see the regulations under that section.

§ 1.402 (c) *Statutory provisions; taxability of beneficiary of employees' trust; certain foreign situs trusts.*

SEC. 402. *Taxability of beneficiary of employees' trust.* * * *

(c) *Taxability of beneficiary of certain foreign situs trusts.* For purposes of subsections (a) and (b), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501 (a), except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501 (a).

§ 1.402 (c)–1 *Taxability of beneficiary of certain foreign situs trusts.* For purposes of subsections (a) and (b) of section 402, a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501 (a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a qualified trust exempt from tax under section 501 (a) The distributee from a trust having a foreign situs must establish that at the time of a distribution the trust would be exempt under section 501 (a) if it had been created or organized in the United States. If the trust could have so qualified for exemption at such time, the distribution is taxable under section 402 (a) and § 1.402 (a)–1. For example, a total distribution, as defined in section 402 (a) (2) from such a trust shall be treated in accordance with § 1.402 (a)–1 (a) (6) as a long-term capital gain, except in the case of a nonresident alien individual (see sections 871 and 1441 and the regulations thereunder) However, if the trust could not so qualify even if it had been created or organized in the United States, then the distribution is taxable under section 402 (b) and § 1.402 (b)–1.

§ 1.402 (d) *Statutory provisions; taxability of beneficiary of employees' trust; annuities under agreements entered into prior to October 21, 1942.*

SEC. 402. *Taxability of beneficiary of employees' trust.* * * *

(d) *Certain employees' annuities.* Notwithstanding subsection (b) or any other provision of this subtitle, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

(1) Such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) Such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) Under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under section 165 (a) of the Internal Revenue Code of 1939. For purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942.

§ 1.402 (d)–1 *Effect of section 402 (d).* (a) If the requirements of section 402 (d) are met, a contribution made by an employer on behalf of an employee to a trust which is not exempt under section 501 (a) shall not be included in the income of the employee in the year in which the contribution is made. Such contribution will be taxable to the employee, when received in later years, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. See § 1.403 (b)–1 (b) The intent and purpose of section 402 (d) is to give those employees, covered under certain non-exempt trusts to which such section applies, essentially the same tax treatment as those covered by trusts described in section 401 (a) and exempt under section 501 (a) except that the capital gains treatment referred to in section 402 (a) (2) does not apply.

(b) Every person claiming the benefit of section 402 (d) must be able to demonstrate to the satisfaction of the Commissioner that all of the provisions of such section are met. The taxpayer must produce sufficient evidence to prove:

(1) That, before October 21, 1942, he was employed by the particular employer making the contribution in question and was at such time definitely covered by a written agreement, entered into before October 21, 1942, between himself and the employer, or between the employer and the trustee of a trust established by the employer before October 21, 1942, and that the contribution by the employer was made pursuant to such agreement. The fact that an employee may have been potentially covered is not sufficient. Evidence that the employment was entered into, or the agreement executed, "as of" a date before October 21, 1942, or that the agreement or trust instrument which did not theretofore meet the requirements of section 402 (d) was modified or amended after October 20, 1942, so as to come within the provisions of such section, will not satisfy the requirements of section 402 (d)

(2) That such contribution, pursuant to the terms of such agreement, was to be applied for the purchase of an annuity contract for the taxpayer. In the case of a contribution by the employer of an annuity contract purchased by such employer and transferred by him to the trustee of the trust, evidence should be presented to prove that such contract was purchased for the taxpayer by the employer pursuant to the terms of a written agreement between the employer and the employee or between the employer and the trustee, entered into before October 21, 1942.

(3) That under the written terms of the trust agreement the taxpayer is not entitled during his lifetime, except with the consent of the trustee, to any payments other than annuity payments under the annuity contract or contracts purchased by the trustee or by the employer and transferred to the trustee, and that the trustee may grant or withhold such consent free from control by the taxpayer, the employer, or any other person. However, such control will not be presumed from the fact that the trustee is himself an officer or employee of the employer. As used in section 402 (d) the phrase "if * * * under the terms of the trust agreement the employee is not entitled" means that the trust instrument must make it impossible for the prohibited distribution to occur, whether by operation or natural termination of the trust, whether by power of revocation or amendment, other than with the consent of the trustee, whether by the happening of a contingency, by collateral arrangement, or any other means. It is not essential that the employer relinquish all power to modify or terminate the trust but it must be impossible, except with the consent of the trustee, for any payments under annuity contracts purchased by the trustee, or by the employer and transferred to the trustee, to be received by the taxpayer, directly or indirectly, other than as annuity payments.

(4) The nature and amount of such contribution and the extent to which income taxes have been paid thereon before January 1, 1949, and not credited or refunded.

(5) If it is claimed that section 402 (d) applies to amounts contributed to a trust after June 1, 1949, the taxpayer must prove to the satisfaction of the Commissioner that the trust did not, on June 1, 1949, qualify for exemption under section 165 (a) of the Internal Revenue Code of 1939. Where an employer buys an annuity contract which is transferred to the trustee, the date of the purchase of the annuity contract and not the date of the transfer to the trustee is the controlling date in determining whether or not the contribution was made to the trust after June 1, 1949.

§ 1.402 (e) *Statutory provisions; taxability of beneficiary of employees' trust; certain plan terminations.*

SEC. 402. *Taxability of beneficiary of employees' trust.* * * *

(e) *Certain plan terminations.* For purposes of subsection (a) (2), distributions made after December 31, 1953, and before January 1, 1955, as a result of the complete termination of a stock bonus, pension, or profit-sharing plan of an employer which is a corporation, if the termination of the plan is incident to the complete liquidation, occurring before the date of enactment of this title, of the corporation, whether or not such liquidation is incident to a reorganization as defined in section 368 (a), shall be considered to be distributions on account of separation from service.

§ 1.402 (e)–1 *Certain plan terminations.* Distributions made after December 31, 1953, and before January 1, 1955, as a result of the complete termination of an employees' trust described in section 401 (a) which is exempt under section 501 (a) shall be considered distributions on account of separation from service for purposes of section 402 (a) (2) if the employer who established the trust is a corporation, and the termination of the plan is incident to the complete liquidation of the corporation before August 16, 1954, regardless of whether such liquidation is incident to a reorganization as defined in section 368.

§ 1.403 (a) *Statutory provisions; taxation of employee annuities; qualified annuity plan.*

SEC. 403. *Taxation of employee annuities*—(a) *Taxability of beneficiary under a qualified annuity plan*—(1) *General rule.* Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section 404 (a) (2), or if an annuity contract is purchased for an employee by an employer described in section 501 (c) (3) which is exempt from tax under section 501 (a), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply.

(2) *Capital gains treatment for certain distributions*—(A) *General rule.* If—

(i) An annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 401 (a) (3), (4), (5), and (6);

(ii) Such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) The total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee,

then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months.

(B) *Definition.* For purposes of subparagraph (A), the term "total amounts" means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service.

§ 1.403 (a)–1 *Taxability of beneficiary under a qualified annuity plan.* (a) An employee or retired or former employee for whom an annuity contract is purchased by his employer is not required to include in his gross income the amount paid for the contract at the time such amount is paid, whether or not his rights to the contract are forfeitable, if—

(1) The annuity contract is purchased under a plan with respect to which the amounts paid by the employer are deductible under section 404 (a) (2) or

(2) The annuity contract is purchased under a plan which meets the requirements of section 404 (a) (2) although the employer does not deduct the amounts paid for the contract under such section, or

(3) The annuity contract is purchased by an employer which is an organization described in section 501 (c) (3) and exempt under section 501 (a), without regard to whether the amount paid for such contract would be deductible under section 404 (a) (2)

(b) The amounts received by or made available to any employee referred to in paragraph (a) of this section under such annuity contract shall be included in gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply, and except that certain total distributions described in section 403 (a) (2) are taxable as long-term capital gains. For the treatment of such total distributions, see § 1.403 (a)–2.

(c) If upon the death of an employee or of a retired employee, the widow or other beneficiary of such employee is paid, in accordance with the terms of the annuity contract relating to the deceased employee, an annuity or other death benefit, the extent to which the amounts received by or made available to the beneficiary must be included in the beneficiary's income under section 403 (a) shall be determined in accordance with the rules presented in § 1.402 (a)–1 (a) (5)

(d) If under a qualified annuity plan a group contract providing group permanent life insurance protection is purchased for the employees, the same rules which are applicable when contracts providing life insurance protection are purchased by a trust described in section 401 (a) and exempt under section 501 (a), shall be applicable in the case of such a contract. For such rules, see § 1.402 (a)–1 (a) (2) (3), and (4) Section 403 (a) is not applicable where individual contracts providing life insurance protection are purchased for the employees.

(e) As to inclusion of full-time life insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20)

§ 1.403 (a)–2 *Capital gains treatment for certain distributions.* (a) If the total amounts payable with respect to any employee for whom an annuity contract has been purchased by an employer under a plan which—

(1) Meets the requirements of section 401 (a) (3), (4), (5), and (6) and

(2) Requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan,

are paid to the payees within one taxable year of the payee by reason of the employee's death or other separation from the service, or by reason of the death of the employee after the employee's separation from the service, such total payments to the extent they exceed the amount contributed by the employee and the amount excludable under section 101 (b) in the case of a death, shall be considered a gain from the sale or exchange of a capital asset held for more than six months. In determining such excess, "the amount contributed by the employee" is the net amount of employee contributions (determined by applying the rules of section 72 (f)) reduced by any amounts theretofore distributed to him which were not includible in gross income. For example, if under an annuity contract purchased under a plan described in this section, the total distributions payable to the employee's widow are paid to her in the year in which the employee dies, in the amount of $8,000, and if $5,000 thereof is excludable under section 101 (b), and if the employee made contributions of $600 and had received no payments, the remaining amount of $2,400 will be considered a gain from the sale or exchange of a capital asset held for more than six months.

(b) The term "total amounts" means the balance to the credit of an employee with respect to all annuities under the annuity plan which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service. If, for example, an employee commences to receive annuity payments on retirement and then a lump sum payment is made to his widow upon his death, the capital gains treatment applies to the lump sum payment. The capital gains treatment does not apply, however, to a distribution before the time the "total amounts" become payable. Thus, if there is more than one contract, and if upon retirement an employee receives a distribution equal to 50 percent of the commuted value of his annuities, and the balance is payable to his estate or named beneficiary on death, the capital gains treatment is applicable to the balance payable on death but not to the part distributed at retirement since the balance to the credit of the employee means the total amount to his credit on separation from service or death. Similarly, if an employee receives total distributions under one or more contracts and installment or annuity payments under the remaining contracts, the long-term capital gains treatment does not apply. Also, if an employee retires and commences to receive an annuity but subsequently in some succeeding taxable year, he is paid a lump sum in settlement of all future annuity payments, the capital gains treatment does not apply to such lump

sum settlement paid during the lifetime of the employee since it is not a payment on account of separation from the service, or death after separation, but is on account of the settlement of future annuity payments.

§ 1.403 (b) *Statutory provisions; taxation of employee annuities; nonqualified annuity.*

SEC. 403. *Taxation of employee annuities.*
* * *

(b) *Taxability of beneficiary under a nonqualifier annuity.* If an annuity contract purchased by an employer for an employee is not subject to subsection (a) and the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the gross income of the employee in the year in which the amount is contributed. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply.

§ 1.403 (b)–1 *Taxability of beneficiary under a nonqualified annuity.* (a) Except as provided in section 402 (d) if an employer purchases an annuity contract which is not under a plan which meets the conditions of section 404 (a) (2) the amount of such contribution shall be included in the income of the employee for the taxable year during which such contribution is made if, at the time the contribution is made, the employee's rights under the annuity contract are nonforfeitable, except for failure to pay future premiums. If the employee's rights under the annuity contract in such a case were forfeitable at the time the employer's contribution was made for the annuity contract, even though they become nonforfeitable later, the amount of such contribution is not required to be included in the income of the employee. The fact that an employee may not live a sufficient length of time to enjoy any benefits under the annuity contract, or that no payments will be made under any circumstances to his estate or other beneficiary will not make the annuity contract forfeitable. The amounts received by or made available to the employee under the annuity contract shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. For rules relating to the treatment of employer contributions as part of the consideration paid by the employee, see section 72 (f) See also section 101 (b) (2) (D) for rules relating to the treatment of the limited exclusion provided thereunder as part of the consideration paid by the employee.

(b) If an employer has purchased annuity contracts and transferred the same to a trust or if an employer has made contributions to a trust for the purpose of providing annuity contracts for his employees as provided in section 402 (d) (see § 1.402 (d)–1 (a)), the amount so paid or contributed is not required to be included in the income of the employee, but any amount received by or made available to the employee under the annuity contract shall be includible in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. In such case the amount paid or contributed by the employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 72 unless the employee has paid income tax for any taxable year beginning before January 1, 1949, with respect to such payment or contribution by the employer for such year and such tax is not credited or refunded to the employee. In the event such tax has been paid and not credited or refunded the amount paid or contributed by the employer for such year shall constitute consideration paid by the employee for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under section 72.

§ 1.404 (a) *Statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan, general rule.*

SEC. 404. *Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan*—(a) *General rule.* If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income) but if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) *Pension trusts.* In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a), in an amount determined as follows:

(A) An amount not in excess of 5 percent of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Secretary or his delegate upon periodical examinations at not less than 5-year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan, plus

(B) Any excess over the amount allowable under subparagraph (A) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

(C) In lieu of the amounts allowable under subparagraphs (A) and (B) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the Secretary or his delegate, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased.

(D) Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

(2) *Employees' annuities.* In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities and such purchase is a part of a plan which meets the requirements of section 401 (a), (3), (4), (5), and (6), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities.

(3) *Stock bonus and profit-sharing trusts*—(A) *Limits on deductible contributions.* In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501 (a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust", as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1). If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(B) *Profit-sharing plan of affiliated group.* In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504,

if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) *Trusts created or organized outside the United States.* If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501 (a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) *Other plans.* In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid.

(6) *Taxpayers on accrual basis.* For purposes of paragraphs (1), (2), and (3), a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) *Limit of deduction.* If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with 2 or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust, or a trust and an annuity plan.

§ 1.404 (a)–1 *Contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan; general rule.* (a) Section 404 (a) prescribes limitations upon deductions for amounts contributed by an employer under a pension, annuity, stock bonus, or profit-sharing plan, or under any plan of deferred compensation. It is immaterial whether the plan covers present employees only, or present and former employees, or only former employees. As to inclusion of full-time life insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20). Section 404 (a) does not apply to deductions for contributions under a plan which is primarily a dismissal wage, or unemployment benefit plan or a sickness, accident, hospitalization, medical expense, recreational, welfare, or similar benefit plan, or a combination thereof. See section 404 (c) as to certain negotiated plans providing at least medical or hospital care, and pensions on retirement or death. Section 404 (a) is, however, applicable to all contributions (including contributions to provide incidental benefits such as life insurance protection) under a stock bonus, pension, profit-sharing, or annuity plan, whether or not the employees' rights in such contributions are nonforfeitable, but deductions under section 404 (a) are subject to conditions and limitations under section 162 or 212 as well as those particularly provided in section 404 (a).

(b) In order to be deductible under section 404 (a), contributions must be expenses which would be deductible under section 162 (relating to trade or business expenses) or 212 (relating to expenses for production of income) if it were not for the provision in section 404 (a) that they are deductible, if at all, only under section 404 (a). Contributions may therefore be deducted under section 404 (a) only to the extent that they are ordinary and necessary expenses during the taxable year in carrying on the trade or business or for the production of income and are compensation for personal services actually rendered. In no case is a deduction allowable under section 404 (a) for the amount of any contribution for the benefit of an employee in excess of the amount which, together with other deductions allowed for compensation for such employee's services, constitutes a reasonable allowance for compensation for the services actually rendered. What constitutes a reasonable allowance depends upon the facts in the particular case. Among the elements to be considered in determining this are the personal services actually rendered in prior years as well as the current year and all compensation and contributions paid to or for such employee in prior years as well as in the current year. Thus, a contribution which is in the nature of additional compensation for services performed in prior years may be deductible, even if the total of such contributions and other compensation for the current year would be in excess of reasonable compensation for services performed in the current year, provided that such total plus all compensation and contributions paid to or for such employee in prior years represents a reasonable allowance for all services rendered by the employee by the end of the current year. A contribution under a plan which is primarily for the benefit of shareholders of the employer is not deductible. Such a contribution may constitute a dividend within the meaning of section 316. See also §§ 1.162–6 and 1.162–8. In addition to the limitations referred to above, deductions under section 404 (a) are also subject to further conditions and limitations particularly provided therein.

(c) Deductions under section 404 (a) are generally allowable only for the year for which the contribution or compensation is paid, regardless of the fact that the taxpayer may make his return on the accural basis. Exceptions are made in the case of overpayments as provided in paragraphs (1) (3) and (7) of section 404 (a), and, as provided by section 404 (a) (6), in the case of payments made by a taxpayer on the accrual basis not later than the time prescribed by law for filing the return for the taxable year of accrual (including extensions thereof). This latter provision is intended to permit a taxpayer on the accrual basis to deduct such accrued contribution or compensation, provided payment is actually made not later than the time prescribed by law for filing the return for the taxable year of accrual (including extensions thereof) but this provision is not applicable unless, during the taxable year on account of which the contribution is made, the taxpayer incurs a liability to make the contribution, the amount of which is accruable under section 461 for such taxable year. See section 461 and the regulations thereunder. There is another exception in the case of certain taxpayers who are required to make additional contributions as a result of Public Law 74 (Eighty-fourth Congress) approved June 15, 1955, and the regulations thereunder.

§ 1.404 (a)–2 *Information to be furnished by employer claiming deductions.* (a) For the first taxable year for which a deduction from gross income is claimed under section 404 (a) (1) (2) (3) or (7), the employer must file the following information for each plan involved to establish that it meets the requirements of section 401 (a) or 404 (a) (2), and that deductions claimed do not exceed the amount allowable under paragraphs (1), (2), (3) and (7) of section 404 (a) as the case may be:

(1) Verified copies of all the instruments constituting or evidencing the plan, including trust indentures, group annuity contracts, specimen copy of each type of individual contract, and specimen copy of formal announcement and comprehensive detailed description to employees, with all amendments to any such instruments.

(2) A statement describing the plan which identifies it and which sets forth the name or names of the employers, the effective date of the plan and of any amendments thereto, the method of distribution or of disbursing benefits (whether by trustee, insurance company, or otherwise), the dates when the instru-

ments or amendments were executed; the date of formal announcement and the dates when comprehensive detailed description of the plan and of each amendment thereto were made available to employees generally, the dates when the plan and when the trust or the contract evidencing the plan and of any amendments thereto were put into effect so that contributions thereunder were irrevocable and a summary of the provisions and rules relating to—

(i) Employee eligibility requirements for participation in the plan,

(ii) Employee contributions,

(iii) Employer contributions,

(iv) The basis or formula for determining the amount of each type of benefit and the requirements for obtaining such benefits and the vesting conditions,

(v) The medium of funding (e. g., self-insured, unit purchase group annuity contract, individual level annual premium retirement endowment insurance contracts, etc.) and, if not wholly insured, the medium of contributions and the kind of investments, and

(vi) The discontinuance or modification of the plan and distribution or benefit payments upon liquidation or termination.

(3) A tabulation in columnar form showing the information specified below with respect to each of the 25 highest paid employees covered by the plan in the taxable year, listed in order of their nondeferred compensation (where there are several plans of deferred compensation, the information for each of the plans may be shown on a single tabulation without repetition of the information common to the several plans)

(i) Name.

(ii) Whether an officer.

(iii) Percentage of each class of stock owned directly or indirectly by the employee or members of his family.

(iv) Whether the principal duties consist in supervising the work of other employees.

(v) Year of birth.

(vi) Length of service for employer to the close of the year.

(vii) Total nondeferred compensation paid or accrued during the taxable year with a breakdown of such compensation into the following components:

(*a*) Basic compensation and overtime pay

(*b*) Other direct payments, such as bonuses and commissions,

(*c*) Compensation paid other than in cash, such as goods, services, insurance not directly related to the benefits or provided from funds under the plan, etc.

(viii) Amount allocated during the year for the benefit of the employee or his beneficiary (including any insurance provided thereby or directly related thereto) less the employee's contributions during the year, under each other plan of deferred compensation.

(ix) Amount allocated during the year for the benefit of the employee or his beneficiary (including any insurance provided thereby or directly related thereto), less the employee's contributions during the year, under the plan. If a profit-sharing or stock bonus plan, also a breakdown of such amounts into the following components:

(*a*) Amounts originally allocated in the year, and

(*b*) Amounts reallocated in the year.

(x) Amounts of employee contributions during the year under the plan,

(xi) If a pension or annuity plan,

(*a*) The retirement age and date and the form of the retirement benefit,

(*b*) The annual rate or amount of the retirement benefit, and

(*c*) The aggregate of all of the employee's contributions under the plan,

all based, in the case of an employee who is not on retirement benefit under the plan, upon the assumption of his continued employment at his current rate of compensation until his normal retirement age (or the end of the current year if later) and retirement on such date with the normal form of retirement benefit under the plan.

(4) The following totals:

(i) Total nondeferred compensation paid or accrued during the taxable year for all employees covered under the plan and also for all employees of the employer.

(ii) Total amount allocated during the year for the benefit of employees, former or retired employees, or their beneficiaries (including any insurance provided thereby or directly related thereto) less employee contributions during the year under the plan and, if a profit-sharing or stock bonus plan, also a breakdown of such total into the following components:

(*a*) Amount originally allocated in the year, and

(*b*) Amount reallocated in the year.

(5) A schedule showing the total number of employees as of the close of the year for each of the following groups, based on reasonable estimates:

(i) All employees ineligible for coverage under the plan because of requirements as to employment classification, specifying the reasons applicable to the group (as, for example, temporary, seasonal, part time, hourly pay basis, etc.)

(ii) All employees ineligible for coverage under the plan because of requirements as to length of service and not included in subdivision (i) of this subparagraph.

(iii) All employees ineligible for coverage under the plan because of requirements as to minimum age and not included in subdivision (i) or (ii) of this subparagraph.

(iv) All employees ineligible for coverage under the plan solely because of requirements as to minimum rate of compensation.

(v) All employees ineligible for coverage under the plan other than those employees included in subdivision (i), (ii) (iii) or (iv) of this subparagraph, specifying the reason applicable to the group.

(vi) All employees ineligible for coverage under the plan for any reasons, which should be the sum of subdivisions (i) to (v) inclusive, of this subparagraph.

(vii) All employees eligible for coverage but not covered under the plan.

(viii) All employees covered under the plan.

(ix) All employees of the employer, which should be the sum of subdivisions (vi) (vii), and (viii) of this subparagraph.

If it is claimed that the requirements of section 401 (a) (3) (A) are satisfied, also the data and computations necessary to show that such requirements are satisfied.

(6) In the case of a trust, a detailed balance sheet and a detailed statement of receipts and disbursements during the year; in the case of a nontrusteed annuity plan, a detailed statement of the names of the insurers, the contributions paid by the employer and by the employees, and a statement as to the amounts and kinds of premium refunds or similar credits made available and the disposition of such credits in the year.

(7) If a pension or annuity plan, a detailed description of all the methods, factors, and assumptions used in determining costs and in adjusting the costs for actual experience under the plan (including any loadings, contingency reserves, or special factors and the basis of any insured costs or liabilities involved therein) explaining their source and application in sufficient detail to permit ready analysis and verification thereof, and, in the case of a trust, a detailed description of the basis used in valuing the investments held. Also a summary of the resulting costs or liabilities and adjustments for the year under the pension or annuity plan in sufficient detail to permit ready verification of the reasonableness thereof.

(8) A statement of the applicable limitations under section 404 (a) (1), (2), (3) or (7) and an explanation of the method of determining such limitations and a summary of the data and computations necessary to determine the allowable deductions for the taxable year.

(9) A statement of the contributions paid in the taxable year, showing the date and amount of each payment. Also a summary of the deductions claimed for the taxable year for the plan with a breakdown of the deductions claimed into the following components:

(i) For contributions paid in the taxable year before giving effect to the provisions of paragraph (7) of section 404 (a)

(ii) For contributions paid in prior taxable years beginning after December 31, 1941, in accordance with the carryover provisions of paragraphs (1) and (3) of section 404 (a), before giving effect to the provisions of paragraph (7) thereof, and in accordance with the carryover provisions of section 404 (d)

(iii) Any reductions or increases in the deductions in accordance with the provisions of paragraph (7) of section 404 (a)

(b) For taxable years subsequent to the year for which all of the applicable information under paragraph (a) of this section (or corresponding provisions of prior regulations) has been filed, information is to be filed only to the following extent:

(1) If there is any change in the plan, instruments, methods, factors, or assumptions upon which the data and information specified in subparagraph (1),

(2) or (7) of paragraph (a) of this section are based, a detailed statement explaining the change and its effect is to be filed only for the taxable year in which the change is put into effect. However, if there is no such change, unless otherwise requested by the district director, merely a statement that there is no such change is to be filed.

(2) The information specified in subparagraph (3) of paragraph (a) of this section which has been filed for a taxable year, unless otherwise requested by the district director and so long as the plan and the method and basis of allocations are not changed, is to be filed for subsequent years only to the extent of showing in the tabulation such information with respect to employees who, at any time in the taxable year, own, directly or indirectly, more than 5 percent of the voting stock, considering stock so owned by an individual's spouse or minor lineal descendant as owned by the individual for this purpose.

(3) The information specified in subparagraphs (4) (5) (6) (8) and (9) of paragraph (a) of this section.

(c) If a deduction is claimed under section 404 (a) (5) for the taxable year, the taxpayer shall furnish such information as is necessary to show that the deduction is not allowable under the other paragraphs of section 404 (a) that the amount paid is an ordinary and necessary expense or an expense for the production of income, and that the employees' rights to, or derived from, such employer's contribution or such compensation were nonforfeitable at the time the contribution or compensation was paid.

(d) For the purpose of the information required by this section, contributions paid in a taxable year should include those deemed to be so paid in accordance with the provisions of section 404 (a) (6) and should exclude those deemed to be paid in the prior taxable year in accordance with such provisions. As used in this section, "taxable year" refers to the taxable year of the employer and, unless otherwise requested by the district director, a "year" which is not specified as a "taxable year" may be taken as the taxable year of the employer or as the plan, trust, valuation, or group contract year with respect to which deductions are being claimed provided the same rule is followed consistently so that there is no gap or overlap in the information furnished for each item. In any case the date or period to which each item of information furnished relates should be clearly shown. All the information required by this section should be filed with the tax return for the taxable year in which the deduction is claimed except that, unless sooner requested by the district director, such information, other than that specified in subparagraphs (4) (i) and (9) of paragraph (a) of this section, may be filed within 12 months after the close of the taxable year provided there is filed with the tax return a statement that the information cannot reasonably be filed therewith, setting forth the reasons therefor.

(e) In any case all the information and data required by this section must be filed in the office of the district director in which the employer files his tax returns and identified for association with the appropriate returns and must be filed independently of any information and data otherwise submitted in connection with a determination of the qualification of the trust or plan under section 401 (a). The district director may, in addition, require any further information that he considers necessary to determine allowable deductions under section 404 or qualification under section 401 and may waive the filing of such information required herein which he finds unnecessary in a particular case.

(f) Records substantiating all data and information required by this section to be filed must be kept at all times available for inspection by internal revenue officers at the main office or place of business of the employer.

§ 1.404 (a)–3 *Contributions of an employer to or under an employees' pension trust or annuity plan that meets the requirements of section 401 (a), application of section 404 (a) (1)* (a) If contributions are paid by an employer to or under a pension trust or annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404 (a)–1) the contributions are deductible under section 404 (a) (1) or (2) if the further conditions provided therein are also satisfied. As used here, a "pension trust" means a trust forming part of a pension plan and an "annuity plan" means a pension plan under which retirement benefits are provided under annuity or insurance contracts without a trust. This section is also applicable to contributions to a foreign situs pension trust which could qualify for exemption under section 501 (a) except that it is not created or organized in the United States. For the meaning of "pension plan" as used here, see § 1.401–1 (b) (1) (i). Where disability, withdrawal, insurance, or survivorship benefits incidental and directly related to the retirement benefits under a pension or annuity plan are provided for the employees or their beneficiaries by contributions under the plan, deductions on account of such incidental benefits are also covered under section 404 (a) (1) or (2) See § 1.402 (a)–1 (a) (3) as to taxability to employees of cost of incidental insurance protection. In order to be deductible under section 404 (a) (1), contributions to a pension trust must be paid in a taxable year of the employer which ends with or within a year of the trust for which it is exempt under section 501 (a) In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with section 404 (a) (1) (D) the succeeding year also must end with or within a taxable year of the trust for which it is exempt under section 501 (a). See § 1.404 (a)–3 as to conditions for deductions under section 404 (a) (2) in the case of an annuity plan. In either case, the deductions are also subject to further limitations provided in section 404 (a) (1) The limitations provided in section 404 (a) (1) are, with an exception provided for certain years under subparagraph (A) thereof (see § 1.404 (a)–4) based on the actuarial costs of the plan.

(b) In determining costs for the purpose of limitations under section 404 (a) (1) the effects of expected mortality and interest must be discounted and the effects of expected withdrawals, changes in compensation, retirements at various ages, and other pertinent factors may be discounted or otherwise reasonably recognized. A properly weighted retirement age based on adequate analyses of representative experience may be used as an assumed retirement age. Different basic assumptions or rates may be used for different classes of risks or different groups where justified by conditions or required by contract. In no event shall costs for the purpose of section 404 (a) (1) exceed costs based on assumptions and methods which are reasonable in view of the provisions and coverage of the plan, the funding medium, reasonable expectations as to the effects of mortality and interest, reasonable and adequate regard for other factors such as withdrawal and deferred retirement (whether or not discounted) which can be expected to reduce costs materially, reasonable expenses of operation, and all other relevant conditions and circumstances. In any case, in determining the costs and limitations, an adjustment shall be made on account of any experience more favorable than that assumed in the basis of limitations for prior years. Unless such adjustments are consistently made every year by reducing the limitations otherwise determined by any decrease in liability or cost arising from experience in the next preceding taxable year which was more favorable than the assumptions on which the costs and limitations were based, the adjustment shall be made by some other method approved by the Commissioner.

(c) The amount deductible for any year on account of contributions to or under a pension or annuity plan is determined under subparagraph (A) or subparagraphs (A) and (B) or subparagraph (C) of section 404 (a) (1) The method used to determine such amount must be shown in a statement attached to the return for the first taxable year for which a deduction is claimed. The method so adopted shall be used for the taxable year and all succeeding taxable years unless approval of a change in method is obtained from the Commissioner in accordance with section 446 (e) and the regulations thereunder. Such approval will not be granted for (1) any taxable year after the time prescribed by law for filing the return for such year (including extensions thereof) has expired, or (2) any taxable year with respect to which the taxpayer claims that a payment or part of a payment in a prior year is a carryover available as a deduction under section 404 (a) (1) (D) for the taxable year or any succeeding taxable year.

(d) Any expenses incurred by the employer in connection with the plan, such as trustee's and actuary's fees, which are not provided for by contributions under the plan are deductible by the employer under section 162 (relating to trade or business expenses), or 212

(relating to expenses for production of income) to the extent that they are ordinary and necessary.

(e) In case deductions are allowable under section 404 (a) (3) as well as under section 404 (a) (1) or (2) the limitations under section 404 (a) (1) and (3) are determined and applied without giving effect to the provisions of section 404 (a) (7) but the amounts allowable as deductions are subject to the further limitations provided in section 404 (a) (7) See § 1.404 (a)–13.

§ 1.404 (a)–4 *Pension and annuity plans; limitations under section 404 (a) (1) (A)* (a) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3) the initial limitation under section 404 (a) (1) (A) is 5 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the pension or annuity plan. This initial 5-percent limitation applies to the first taxable year for which a deduction is allowed for contributions to or under such a plan and also applies to any subsequent year for which the 5-percent figure is not reduced as provided in this section. For years to which the initial 5-percent limitation applies, no adjustment on account of prior experience is required. If the contributions do not exceed the initial 5-percent limitation in the first taxable year to which this limitation applies, the taxpayer need not submit actuarial data for such year.

(b) For the first taxable year following the first year to which the initial 5-percent limitation applies, and for every fifth year thereafter, or more frequently where preferable to the taxpayer, the taxpayer shall submit with his return a certification by a qualified actuary or by the company underwriting a nontrusteed annuity plan, of the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan with a statement explaining all the methods, factors, and assumptions used in determining such amount. This amount may be determined as the sum of (1) the unfunded past service cost as of the beginning of the year, and (2) the normal cost for the year. Such costs shall be determined by methods, factors, and assumptions appropriate as a basis of limitations under section 404 (a) (1) (C) Whenever requested by the district director, a similar certification and statement shall be submitted for the year or years specified in such request. The district director will make periodical examinations of such data at not less than 5-year intervals. Based upon such examinations the Commissioner will reduce the limitation under section 404 (a) (1) (A) below the 5-percent limitation for the years with respect to which he finds that the 5-percent limitation exceeds the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan. Where the limitation is so reduced, the reduced limitation shall apply until the Commissioner finds that a subsequent actuarial valuation shows a change to be necessary. Such subsequent valuation may be made by the taxpayer at any time and submitted to the district director with a request for a change in the limitation.

(c) For the purpose of limitations under section 404 (a) (1) (A) "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a), including a plan that qualifies under section 404 (a) (2) Where two or more pension or annuity plans cover the same employee, under section 404 (a) (1) (A) the deductions with respect to each such plan are subject to the limitations applicable to the particular plan and the total deductions for all such plans are also subject to the limitations which would be applicable thereto if they constituted a single plan. Where, because of the particular provisions applicable to a large class of employees under a plan, the costs with respect to such employees are nominal in comparison with their compensation, after the first year to which the initial 5-percent limitation applies, deductions under section 404 (a) (1) (A) are subject to limitations determined by considering the plan applicable to such class as if it were a separate plan. Deductions are allowable to the extent of the applicable limitations under section 404 (a) (1) (A) even where these are greater than the applicable limitations under section 404 (a) (1) (B) or section 404 (a) (1) (C)

§ 1.404 (a)–5 *Pension and annuity plans; limitations under section 404 (a) (1) (B)* (a) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3) under section 404 (a) (1) (B) deductions may be allowed to the extent of limitations based on costs determined by distributing the remaining unfunded cost of the past and current service credits with respect to all employees covered under the trust or plan as a level amount or level percentage of compensation over the remaining service of each such employee except that, as to any three individuals with respect to whom more than 50 percent of such remaining unfunded cost is attributable, the remaining unfunded cost attributable to such individuals shall be distributed evenly over a period of at least five taxable years.

(b) The statutory limitation for any taxable year under section 404 (a) (1) (B) is any excess of the amount of the costs described in paragraph (a) of this section for the year over the amount allowable as a deduction under section 404 (a) (1) (A)

(c) For this purpose, such excess, adjusted for prior experience, may be computed for each year as follows, all determinations being made as of the beginning of the year:

(1) Determine the value of all benefits expected to be paid after the beginning of the year for all employees, any former employees, and any other beneficiaries, then covered under the plan.

(2) If employees contribute under the plan, determine the value of all contributions expected to be made after the beginning of the year by employees then covered under the plan.

(3) Determine the value of all funds of the plan as of the beginning of the year.

(4) Determine the amount remaining to be distributed as a level amount or as a level percentage of compensation over the remaining future service of each employee by subtracting from subparagraph (1) of this paragraph the sum of subparagraphs (2) and (3) of this paragraph.

(5) Determine the value of all compensation expected to be paid after the beginning of the year to all employees then covered under the plan.

(6) Determine an accrual rate for each employee by dividing subparagraph (5) of this paragraph into subparagraph (4) of this paragraph.

(7) Compute the excess under section 404 (a) (1) (B) for the year by multiplying the compensation paid to all employees covered under the plan during the year by any excess of subparagraph (6) of this paragraph over 5 percent. In general, where this method is used, the limitation under section 404 (a) (1) (B) will be equal to the excess so computed without further adjustment on account of prior favorable experience, provided all the factors and assumptions used are reasonable in view of all applicable considerations (see § 1.404 (a)–3) and provided subparagraph (5) of this paragraph is not less than five times the annual rate of compensation in effect at the beginning of the year.

(d) Instead of determining the excess deductible under section 404 (a) (1) (B) by the method shown in paragraph (c), such excess may be based upon cost determined by some other method which is reasonable and appropriate under the circumstances. Thus, such excess may be based on the amounts necessary with respect to each individual covered employee to provide the remaining unfunded cost of all his benefits under the plan distributed as a level amount over the period remaining until the normal commencement of his retirement benefits, in accordance with other generally accepted actuarial methods which are reasonable and appropriate in view of the provisions of the plan, the funding medium, and other applicable considerations.

§ 1.404 (a)–6 *Pension and annuity plans; limitations under section 404 (a) (1) (C)* (a) Subject to the applicable general conditions and limitations (see § 1.404 (a)–3) in lieu of amounts deductible under the limitations of section 404 (a) (1) (A) and section 404 (a) (1) (B) deductions may be allowed under section 404 (a) (1) (C) to the extent of limitations based on normal and past service or supplementary costs of providing benefits under the plan. "Normal cost" for any year is the amount actuarially determined which would be required as a contribution by the employer in such year to maintain the plan if the plan had been in effect from the beginning of service of each then included employee and if such costs for prior years had been paid and all assumptions as to interest, mortality, time

of payment, etc., had been fulfilled. Past service or supplementary cost at any time is the amount actuarially determined which would be required at such time to meet all the future benefits provided under the plan which would not be met by future normal costs and employee contributions with respect to the employees covered under the plan at such time.

(b) The limitation under section 404 (a) (1) (C) for any taxable year is the sum of normal cost for the year plus an amount not in excess of one-tenth of the past service or supplementary cost as of the date of the past service or supplementary credits are provided under the plan. For this purpose the normal costs may be determined by any generally accepted actuarial method and may be expressed either as (1) the aggregate of level amounts with respect to each employee covered under the plan, (2) a level percentage of payroll with respect to each employee covered under the plan, or (3) the aggregate of the single premium or unit costs for the unit credits accruing during the year with respect to each employee covered under the plan, provided, in any case, that the method is reasonable in view of the provisions and coverage of the plan, the funding medium, and other applicable considerations. The limitation may include one-tenth of the past service or supplementary cost as of the date the provisions resulting in such cost were put into effect, but it is subject to adjustments for prior favorable experience. See § 1.404 (a)–3. In any case, past service or supplementary costs shall not be included in the limitation for any year in which the amount required to fund fully or to purchase such past service or supplementary credits has been deducted, since no deduction is allowable for any amount (other than the normal cost) which is paid in after such credits are fully funded or purchased.

§ 1.404 (a)–7 *Pension and annuity plans; contributions in excess of limitations under section 404 (a) (1) application of section 404 (a) (1) (D)* Where contributions paid by an employer in a taxable year to or under a pension or annuity plan exceed the limitations applicable under section 404 (a) (1) but otherwise satisfy the conditions for deduction under section 404 (a) (1) or (2) then in accordance with section 404 (a) (1) (D) the excess contributions are carried over and are deductible in succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each succeeding year and the limitation applicable to such year under section 404 (a) (1) (A) (B) or (C) The provisions of section 404 (a) (1) (D) are to be applied before giving effect to the provisions of section 404 (a) (7) for any year. The carryover provisions of section 404 (a) (1) (D) before effect has been given to section 404 (a) (7) may be illustrated by the following example for a plan put into effect in a taxable year ending December 31, 1954.

Taxable year ending Dec. 31, 1954:	
Amount of contributions paid in year	$100,000
Limitation applicable to year	60,000
Amount deductible for year	60,000
Excess carried over to succeeding years	40,000
Taxable year ending Dec. 31, 1955:	
Amount of contributions paid in year	25,000
Carried over from previous years	40,000
Total deductible subject to limitation	65,000
Limitation applicable to year	50,000
Amount deductible for year	50,000
Excess carried over to succeeding years	15,000
Taxable year ending Dec. 31, 1956:	
Amount of contributions paid in year	10,000
Carried over from previous years	15,000
Total deductible subject to limitation	25,000
Limitation applicable to year	45,000
Amount deductible for year	25,000
Excess carried over to succeeding years	None

§ 1.404 (a)–8 *Contributions of an employer under an employees' annuity plan which meets the requirements of section 401 (a) application of section 404 (a)* (2) (a) If contributions are paid by an employer under an annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404 (a)–1) the contributions are deductible under section 404 (a) (2) if the further conditions provided therein are satisfied. For the meaning of "annuity plan" as used here, see § 1.404 (a)–3. In order that contributions by the employer may be deducted under section 404 (a) (2) all of the following conditions must be satisfied:

(1) The contributions must be paid toward the purchase of retirement annuities (or for disability, severance, insurance, or survivorship benefits incidental and directly related to such annuities) under an annuity plan for the exclusive benefit of the employer's employees or their beneficiaries. See § 1.401–1 (a)

(2) The contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it meets the applicable requirements with respect to discrimination set out in section 401 (a) (3), (4), (5) and (6) In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with section 404 (a) (1) (D) the succeeding year also must end with or within a taxable year of the plan for which it meets such requirements. See §§ 1.401–3 and 1.401–4. These requirements are considered to be satisfied for the period beginning with the date on which an annuity plan was put into effect and ending with the fifteenth day of the third month following the close of the taxable year of the employer in which the plan was put into effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. See section 401 (b) and § 1.401–5. It should be noted that the period in which a plan may be amended to qualify under section 401 (b) ends before the date taxpayers, other than corporations, are required to file income tax returns.

(3) There must be a definite written arrangement between the employer and the insurer that refunds of premiums if any, shall be applied within the taxable year of the employer in which received or within the next succeeding taxable year toward the purchase of retirement annuities (or for disability, severance, insurance, or survivorship benefits incidental and directly related to such annuities) under the plan. For the purpose of this condition, "refunds of premiums" means payments by the insurer on account of credits such as dividends, experience rating credits, or surrender or cancellation credits. The arrangement may be in the form of contract provisions or written directions of the employer or partly in one form and partly in another. This condition will be considered satisfied where—

(i) All credits are applied regularly, as they are determined, toward the premiums next due under the contracts before any further employer contributions are so applied, and

(ii) Under the arrangement,

(*a*) No refund of premiums may be made during continuance of the plan unless applied as aforesaid, and

(*b*) If refunds of premiums may be made after discontinuance of the plan on account of surrenders or cancellations before all retirement annuities provided under the plan with respect to service before its discontinuance have been purchased, such refunds will be applied in the taxable year of the employer in which received, or in the next succeeding taxable year, to purchase retirement annuities for employees by a procedure which does not contravene the conditions of section 401 (a) (4).

(b) Where the above conditions are satisfied, the amounts of deductions under section 404 (a) (2) are governed by the limitations provided in section 404 (a) (1). See §§ 1.404 (a)–3 to 1.404 (a)–7, inclusive.

§ 1.404 (a)–9 *Contributions of an employer to an employees' profit-sharing or stock bonus trust that meets the requirements of section 401 (a) application of section 404 (a) (3) (A)* (a) If contributions are paid by an employer to a profit-sharing or stock bonus trust for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404 (a)–1) the contributions are deductible under section 404 (a) (3) (A) if the further conditions provided therein are also satisfied. In order to be deductible under section 404 (a) (3) (A) the contributions must be paid in a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501

(a) and the trust must not be designed to provide retirement benefits for which the contributions can be determined actuarially. In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with the third sentence of section 404 (a) (3) (A) the succeeding year also must end with or within a taxable year of the trust for which it is exempt under section 501 (a) This section is also applicable to contributions to a foreign situs profit-sharing or stock bonus trust which could qualify for exemption under section 501 (a) except that it is not created or organized in the United States.

(b) The amount of deductions under section 404 (a) (3) (A) for any taxable year is subject to limitations based on the compensation otherwise paid or accrued during such taxable year to the employees who, in such year, are beneficiaries of the trust funds accumulated under the plan. For this purpose "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a) including a plan that qualifies under section 404 (a) (2) The limitations under section 404 (a) (3) (A) apply to the total amount deductible for contributions to the trust regardless of the manner in which the funds of the trust are invested, applied, or distributed, and no other deduction is allowable on account of any benefits provided by contributions to the trust or by the funds thereof. Where contributions are paid to two or more profit-sharing or stock bonus trusts satisfying the conditions for deduction under section 404 (a) (3) (A) such trusts are considered as a single trust in applying these limitations.

(c) The primary limitation on deductions for a taxable year is 15 percent of the compensation otherwise paid or accrued during such taxable year to the employees who, in such year, are beneficiaries of the trust funds accumulated under the plan. So long as the contributions do not in any year exceed the primary limitation, this is the only limitation under section 404 (a) (3) (A) which has any effect.

(d) In order that the deductions may average 15 percent of compensation otherwise paid or accrued over a period of years, where contributions in some taxable year are less than the primary limitation but contributions in some succeeding taxable year exceed the primary limitation, deductions in each succeeding year are subject to a secondary limitation instead of to the primary limitation. The secondary limitation for any year is equal to the lesser of (1) twice the primary limitation for the year, or (2) any excess of (i) the aggregate of the primary limitations for the year and for all prior years over (ii) the aggregate of the deductions allowed or allowable under the limitations provided in section 404 (a), (3) (A) for all prior years.

(e) In any case where the contributions in a taxable year exceed the amount allowable as a deduction for the year under section 404 (a) (3) (A) the excess is deductible in succeeding taxable years, in order of time, in which the contributions are less than the primary limitations. However, the total deduction for any such succeeding year cannot exceed the lesser of (1) the primary limitation for such year, or (2) the sum of the contributions in such year and the excess contributions not deducted under the limitations of section 404 (a) (3) (A) for prior years.

(f) In case deductions are allowable under section 404 (a) (1) or (2) as well as under section 404 (a) (3) (A), the limitations under section 404 (a) (1) and (3) (A) are determined and applied without giving effect to the provisions of section 404 (a) (7) but the amounts allowable as deductions are subject to the further limitations provided in section 404 (a) (7) See § 1.404 (a)–13.

(g) The provisions of section 404 (a) (3) (A) before giving effect to section 404 (a) (7), may be illustrated as follows:

ILLUSTRATION OF PROVISIONS OF SECTION 404 (a) (3) (A) FOR A PLAN PUT INTO EFFECT IN THE TAXABLE (CALENDAR) YEAR 1954, BEFORE GIVING EFFECT TO SECTION 404 (a) (7)

[All figures represent thousands of dollars]

	Taxable (calendar) years						
	1954	1955	1956	1957	1958	1959	1960
1. Amount of contributions:							
(i) In taxable year	$65	$10	$15	$100	$70	$40	$30
(ii) Carried over from prior taxable years	0	8	0	0	4	5	3
2. Primary limitation applicable to year:							
15 percent of covered compensation in year [1]	57	54	51	48	45	42	39
3. Secondary limitation applicable to year:							
(i) Twice primary limitation	------	------	------	96	90	84	------
(ii) (a) Aggregate primary limitations (see item 2)	------	------	------	210	255	297	------
(b) Aggregate prior deductions (see item 4 (iii))	------	------	------	90	186	255	------
(c) Excess of (a) over (b)	------	------	------	120	69	42	------
(iii) Lesser of (i) or (ii)	------	------	------	96	69	42	------
4. Amount deductible for year on account of:							
(i) Contributions in year	57	10	15	96	69	40	30
(ii) Contributions carried over	0	8	0	0	0	2	3
(iii) Total	57	18	15	96	69	42	33
5. Excess contributions carried over to succeeding years	8	0	0	4	5	3	0

[1] Compensation otherwise paid or accrued during the year to the employees who are beneficiaries of trust funds accumulated under the plan in the year.

§ 1.404 (a)–10 *Profit-sharing plan of an affiliated group; application of section 404 (a) (3) (B)* (a) Section 404 (a) (3) (B) applies only to a profit-sharing plan (or a stock bonus plan under which contributions are determined with reference to profits) established by a group of corporations which constitutes an affiliated group within the meaning of section 1504. In any such case, members of the group which have current or accumulated earnings or profits may, under the following conditions, make contributions under the plan for the benefit of the employees of any member of the group which is prevented from making the contribution it would otherwise have made under the plan because it has no current or accumulated earnings or profits or because its earnings or profits are less than the contributions which it would otherwise have made:

(1) Where the group does not file a consolidated return, the contribution made by each contributing member of the group for the benefit of the employees of any member who is prevented from making a contribution, shall be limited to that portion of its current and accumulated earnings and profits (adjusted for its contribution deductible without regard to section 404 (a) (3) (B)) which the prevented contribution bears to the total accumulated earnings and profits of all the members of the group having such earnings and profits (adjusted for all contributions deductible without regard to section 404 (a) (3) (B)) For the purpose of this section, current earnings and profits shall be computed as of the close of the taxable year without diminution by reason of any dividends during the taxable year and, accumulated earnings and profits shall be computed as of the beginning of the taxable year. The application of this provision may be illustrated as follows:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
A	($10,000)	($140,000)	($150,000)	$200,000	1/5	$6,000	------	------	------	------
B	(5,000)	105,000	100,000	300,000	3/10	9,000	$9,000	$91,000	6/326 × 91,000	$1,674.85
C	75,000	175,000	250,000	500,000	1/2	15,000	15,000	235,000	6/326 × 235,000	4,325.15
Total	60,000	140,000	200,000	1,000,000	------	30,000	24,000	326,000	------	6,000.00

Column
(1) Member.
(2) Earnings and profits of the taxable year.
(3) Accumulated earnings and profits at beginning of taxable year.
(4) Total current and accumulated earnings and profits (column 2 plus column 3).
(5) Compensation of participating employees.
(6) Contribution formula: 50 percent of consolidated earnings and profits, allocated among participating members in proportion of covered payroll of each to covered payroll of consolidated group.
(7) Individual contribution had it not been prevented.
(8) Individual contribution made by each employer for its own employees.
(9) Balance of accumulated earnings and profits (column 4 minus column 8).
(10) Proportion of make-up contribution.
(11) Make-up contribution.

(2) Where the group files a consolidated return, an allocation as illustrated in subparagraph (1) is not required. In such case, the prevented contribution may be made up by the contributing employers in any proportion which may be agreed upon by them.

(b) Prevented contributions which are made up by the contributing employers are deductible by them under the conditions, and within the limitations, of subparagraph (A) of section 404 (a) (3) For the purpose of determining credit carryovers arising under the second sentence of such subparagraph, however, such contributions shall be deemed to have been made by the loss member.

§ 1.404 (a)–11 *Trusts created or organized outside the United States; application of section 404 (a) (4)* In order that a trust may constitute a qualified trust under section 401 (a) and be exempt under section 501 (a) it must be created or organized in the United States and maintained at all times as a domestic trust. See § 1.401–1 (a) Paragraph (4) of section 404 (a) provides, however, that an employer who is an individual resident in the United States, or a domestic corporation, or other entity engaged in trade or business in the United States, making contributions to a foreign stock bonus, pension, or profit-sharing trust, shall be allowed deductions for such contributions, under the applicable conditions and within the prescribed limits of section 404 (a) if such foreign trust would qualify for exemption under section 501 (a) except for the fact that it is a trust created or organized outside the United States.

§ 1.404 (a)–12 *Contributions of an employer under a plan that does not meet the requirements of section 401 (a) application of section 404 (a) (5)* Section 404 (a) (5) covers all cases for which deductions are allowable under section 404 (a) but not allowable under paragraphs (1) (2) (3) or (7) of such section. No deduction is allowable under section 404 (a) (5) for any contribution paid or accrued by an employer under a stock bonus, pension, profit-sharing, or annuity plan, or for any compensation paid or accrued on account of any employee under a plan deferring the receipt of such compensation, except for the year when paid, and then only to the extent allowable under section 404 (a) See § 1.404 (a)–1. If payments are made under such a plan and the amounts are not deductible under the other paragraphs of section 404 (a) they are deductible under paragraph (5) of such subsection to the extent that the rights of individual employees to, or derived from, such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid. As to what constitutes nonforfeitable rights of an employee, see § 1.402 (b)–1. If an amount is accrued but not paid during the taxable year, no deduction is allowable for such amount for such year. If an amount is paid during the taxable year but the rights of the employee therein are forfeitable at the time the amount is paid, no deduction is allowable for such amount for any taxable year.

§ 1.404 (a)–13 *Contributions of an employer where deductions are allowable under section 404 (a) (1) or (2) and also under section 404 (a) (3), application of section 404 (a) (7).* (a) Where deductions are allowable under section 404 (a) (1) or (2) on account of contributions under a pension or annuity plan and deductions are also allowable under section 404 (a) (3) for the same taxable year, on account of contributions to a profit-sharing or stock bonus trust, the total deductions under these sections are subject to the provisions of section 404 (a) (7) unless no employee who is a beneficiary under the trusts or plans for which deductions are allowable under section 404 (a) (1) or (2) is also a beneficiary under the trusts for which deductions are allowable under section 404 (a) (3) The provisions of section 404 (a) (7) apply only to deductions for overlapping trusts or plans, i. e., for all trusts or plans for which deductions are allowable under section 404 (a) (1) (2) or (3) except (1) any trust or plan for which deductions are allowable under section 404 (a) (1) or (2) and which does not cover any employee who is also covered under a trust for which deductions are allowable under section 404 (a) (3), and (2) any trust for which deductions are allowable under section 404 (a) (3) and which does not cover any employee who is also covered under a trust or plan for which deductions are allowable under section 404 (a) (1) or (2) The limitations under section 404 (a) (7) for any taxable year are based on the compensation otherwise paid or accrued during the year to all the employees who are beneficiaries under the overlapping trusts or plans in the year. For this purpose "compensation, otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a), including a plan that qualifies under section 404 (a) (2) The employees who are beneficiaries under overlapping trusts or plans in a year include all the employees who, in the year, are beneficiaries of the funds accumulated under one or more of the overlapping trusts or plans.

(b) Under section 404 (a) (7) any excess of the total amount otherwise deductible for the taxable year under section 404 (a) (1), (2) or (3) as contributions to overlapping trusts or plans over 25 percent of the compensation otherwise paid or accrued during the year to all the employees who are beneficiaries under such trusts or plans, is not deductible for such year but is deductible for succeeding taxable years, in order of time, so that the total deduction for contributions to such trusts or plans for a succeeding taxable year is equal to the lesser of—

(1) 30 percent of the compensation otherwise paid or accrued during the taxable year to all the employees who are beneficiaries under such trusts or plans in the year, or

(2) The sum of (i) the smaller of (*a*) 25 percent of the compensation otherwise paid or accrued during the taxable year to all the employees who are beneficiaries under such trusts or plans in the year, or (*b*) the total of the amounts otherwise deductible under section 404 (a) (1) (2) or (3) for the year for such trusts or plans and (ii) any carryover to the year from prior years under section 404 (a) (7), i. e., any excess otherwise deductible under section 404 (a) (1) (2) or (3) but not deducted for a prior taxable year because of the limitations under section 404 (a) (7)

(c) The limitations under section 404 (a) (7) are determined and applied after all the limitations, deductions otherwise allowable, and carryovers under section 404 (a) (1) (2) and (3) have been determined and applied, and, in particular, after effect has been given to the carryover provision in section 404 (a) (1) (D) and in the second and third sentences of section 404 (a) (3) (A) Where the limitations under section 404 (a) (7) reduce the total amount deductible, the excess deductible in succeeding years is treated as a carryover which is distinct from, and additional to, any excess contributions carried over and deductible in succeeding years under the provisions in section 404 (a) (1) (D) or in the third sentence of section 404 (a) (3) (A) The application of the provisions of section 404 (a) (7) and the treatment of carryovers for a case where the taxable years are calendar years and the overlapping trusts or plans consist of a pension trust and a profit-sharing trust put into effect in 1954 and covering the same employees may be illustrated as follows:

ILLUSTRATION OF APPLICATION OF PROVISIONS OF SECTION 404 (a) (7) AND OF TREATMENT OF CARRYOVERS FOR OVERLAPPING PENSION AND PROFIT-SHARING TRUSTS PUT INTO EFFECT IN 1954 AND COVERING THE SAME EMPLOYEES

[All figures represent thousands of dollars]

	Taxable (calendar) years			
	1954	1955	1956	1957
BEFORE GIVING EFFECT TO SECTION 404 (a) (7)				
Pension trust contributions and limitations, deductions, and carryovers under section 404 (a) (1):				
1. Contributions paid in year	$215	$85	$140	$60
2. Contributions carried over from prior years	0	5	0	20
3. Total deductible for year subject to limitation	215	90	140	80
4. Limitation applicable to year	210	175	120	85
5. Amount deductible for year	210	90	120	80
6. Contributions carried over to succeeding years	5	0	20	0
Profit-sharing trust contributions and limitations, deductions, and carryovers under section 404 (a) (3):				
7. Contributions paid in year	200	125	105	65
8. Contributions carried over from prior years	0	35	10	0
9. Total deductible for year subject to limitation	200	160	115	65
10. Limitation applicable to year	165	150	135	[1] 110
11. Amount deductible for year	165	150	115	65
12. Contributions carried over to succeeding years	35	10	0	0
APPLICATION OF SECTION 404 (a) (7)				
Totals for pension and profit-sharing trust:				
13. Amount deductible for year under section 404 (a) (7):				
(1) 30 percent of compensation covered in year [2]	[3]	300	270	180
(2) (i) (a) 25 percent of compensation covered in year [2]	275	250	225	150
(b) Total amount otherwise deductible for year: item 5 plus item 11	375	240	235	145
(c) Smaller of (a) or (b)	275	240	225	145
(ii) Carryover from prior years under section 404 (a) (7)	0	100	40	10
(iii) Sum of (i) (c) and (ii)	275	340	265	155
(3) Amount deductible: Lesser of (1) or (2) (iii)	275	300	265	155
14. Carryover to succeeding years under section 404 (a) (7): item 13 (2) (ii) plus item 13 (2) (i) (b) minus item 13 (3)	100	40	10	0

[1] Includes carryover of 20 from 1956.
[2] Compensation otherwise paid or accrued during the year to the employees who are beneficiaries under the trusts in the year.
[3] 30 percent limitation not applicable to first year of plan.

§ 1.404 (b) *Statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan, method of contributions, etc., having the effect of a plan.*

SEC. 404. *Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.* * * *

(b) *Method of contributions, etc., having the effect of a plan.* If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, subsection (a) shall apply as if there were such a plan.

§ 1.404 (b)-1 *Method of contribution, etc., having the effect of a plan, effect of section 404 (b)* Section 404 (a) is not confined to formal stock bonus, pension, profit-sharing, and annuity plans, or deferred compensation plans, but it includes any method of contributions or compensation having the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation. Thus, where a corporation pays pensions to a retired employee or employees or to their beneficiaries in such amounts as may be determined from time to time by the board of directors or responsible officers of the company, or where a corporation is under an obligation, whether funded or unfunded, to pay a pension or other deferred compensation to an employee or his beneficiaries, there is a method having the effect of a plan deferring the receipt of compensation for which deductions are governed by section 404 (a) If an employer on the accrual basis defers paying any compensation to an employee until a later year or years under an arrangement having the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, he shall not be allowed a deduction until the year in which the compensation is paid. This provision is not intended to cover the case where an employer on the accrual basis defers payment of compensation after the year of accrual merely because of inability to pay such compensation in the year of accrual, as, for example, where the funds of the company are not sufficient to enable payment of the compensation without jeopardizing the solvency of the company, or where the liability accrues in the earlier year, but the amount payable cannot be exactly determined until the later year.

§ 1.404 (c) *Statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan, certain negotiated plans.*

SEC. 404. *Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.* * * *

(c) *Certain negotiated plans.* If contributions are paid by an employer—

(1) Under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, and pensions on retirement or death of employees; and

(2) Such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). This subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501 (a).

§ 1.404 (c)-1 *Certain negotiated plans; effect of section 404 (c)* (a) Section 404 (a) does not apply to deductions for contributions paid by an employer under a negotiated plan which meets the following conditions:

(1) The contributions under the plan are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees and their families, at least medical or hospital care, and pensions on retirement or death of employees; and

(2) Such plan was established before January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged.

If these conditions are met, such contributions shall be deductible under section 162, to the extent that they constitute ordinary and necessary business expenses.

(b) The term "as a result of an agreement" is intended primarily to cover a trust established under the terms of an agreement referred to in paragraph (a) (2) It will also include a trust established under a plan of an employer, or group of employers, who are in competition with the employers whose facilities were seized by reason of producing the same commodity, and who would therefore be expected to establish such a trust as a reasonable measure to maintain a sound position in the labor market producing the commodity. Thus, for example, if a trust was established under such an agreement in the bituminous coal industry, a similar trust established about the same time in the anthracite coal industry would be covered by this provision.

(c) If any such trust becomes qualified for exemption under section 501 (a), the deductibility of contributions by an employer to such trust on or after the date of such qualification would no longer be governed by section 404 (c), even though the trust may later lose its exemption under section 501 (a)

§ 1.404 (d) *Statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan, carryover of unused deductions.*

SEC. 404. *Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.* * * *

(d) *Carryover of unused deductions.* The amount of any unused deductions or contributions in excess of the deductible amounts for taxable years to which this part does not apply which under section 23 (p) of the Internal Revenue Code of 1939 would be allowable as deductions in later years had such section 23 (p) remained in effect, shall be allowable as deductions in taxable years to which this part applies as if such section 23 (p) were continued in effect for such years. However, the deduction under the preceding sentence shall not exceed an amount which, when added to the deduction allowable under subsection (a) for contributions made in taxable years to which this part applies, is not greater than the amount which would be deductible under subsection (a) if the contributions which give rise to the deduction under the preceding sentence were made in a taxable year to which this part applies.

§ 1.404 (d)–1 *Carryover of unused deductions; effect of section 404 (d).* Contributions for taxable years which began before January 1, 1954, (or ended before August 17, 1954, regardless of when they began) in excess of the deductible limits of section 23 (p) of the Internal Revenue Code of 1939 which would have been available as carryovers and deductible in succeeding taxable years, in order of time, had such section 23 (p) remained in effect, are allowable as deductions for taxable years beginning after December 31, 1953, and ending after August 16, 1954, to the same extent that such deductions would have been allowable had such section 23 (p) remained in effect. This provision, however, does not increase a deduction for a taxable year beyond the applicable limits of section 404 (a) had the carryover constituted part of the contribution for such year. Thus, for example, if a pension plan had been put into effect as of January 1, 1953, when the past service liability was $1,000,000, and the employer contributed $500,000 in 1953, only $100,000 would be deductible in 1953 under section 23 (p) (1) (A) (iii) of the 1939 Code, and $400,000 was available as a carryover to 1954 under section 23 (p) (1) (A) (iv) If the employer made a contribution of the remaining $500,000 in 1954, it would not result in allowable deductions of $200,000 for past service funding in that year (i. e., $100,000 under section 404 (a) and another $100,000 under section 404 (d)) The total allowable deduction for such funding would be only $100,000 for 1954 (10 percent of the initial past service liability of $1,000,000) and the carryover to 1955 would be $800,000. Also, unused deduction carryovers which arose under the second sentence of section 23 (p) (1) (C) of the 1939 Code are continued for years beginning after December 31, 1953, as though arising under the second sentence of section 404 (a) (3) (A)

[F. R. Doc. 55–7000; Filed, Aug. 31, 1955; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 34]

[Bureau of Mines Schedule 23]

MECHANICAL EQUIPMENT FOR MINES; TESTS FOR PERMISSIBILITY AND SUITABILITY; FEES

FIRE-RESISTANT CONVEYOR BELTS

Notice is hereby given that the Secretary of the Interior proposes to issue the regulations in this part governing investigations leading to the approval of fire-resistant conveyor belts as indicated below. Interested persons may submit written data, views, or arguments in regard to the proposed regulations to the Director, Bureau of Mines, Department of the Interior, Washington 25, D. C. All communications shall be in triplicate. All relevant material received not later than 30 days after the publication of this notice in the FEDERAL REGISTER will be considered in the formulation of these regulations.

I. The title of Subchapter E would be amended to read as follows: "Subchapter E—Mechanical Equipment for Mines; Tests for Permissibility or Acceptability; Fees."

II. The following Part 34 would be added to Subchapter E of Title 30, Code of Federal Regulations:

Preliminary statement. The Bureau of Mines is prepared at its Central Experiment Station, Pittsburgh, Pennsylvania, to conduct tests of conveyor belts to determine their fire-resistant properties.

The authority for conducting such tests and investigations is contained in the act of February 25, 1913 (37 Stat. 681) as amended by the act of June 30, 1932 (47 Stat. 410) and by Executive Order No. 6611, February 22, 1934 (30 U. S. C. secs. 3, 5, 7) The act of 1913, as amended, contains the following provision:

For tests or investigations authorized by the Secretary of the Interior under the provisions of this Act, except those performed for the Government of the United States or State governments within the United States, a fee sufficient in each case to compensate the Bureau of Mines for the entire cost of the services rendered shall be charged, according to a schedule prepared by the Director of the Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts.

Sec.

§ 34.1 *Definitions*—(a) *Fire-resistant conveyor belt.* A conveyor belt that is identical in all respects to the sample of the conveyor belt designated as acceptable under this part.

(b) *Sample.* That portion of a conveyor belt submitted to the Bureau by a manufacturer for acceptance testing.

(c) *Specimen.* A specific portion of a sample prepared for testing purposes.

(d) *Acceptance.* Written official notification by the Bureau of Mines that a conveyor belt has met satisfactorily the requirements of this part.

(e) *Acceptance marking.* An identifying mark indicating that the conveyor belt has been accepted for listing by the Bureau of Mines as fire-resistant.

§ 34.2 *Scope of this part.* The regulations in this part define the fire-resistant properties, methods of testing to determine such properties, the manner in which samples should be submitted and specimens prepared for tests, and the manufacturer's identification and markings to denote acceptance when the results of tests are satisfactory. Other requirements, such as strength, resistance to wear, and flexibility, are not covered by the regulations in this part.

§ 34.3 *Preliminary consultation.* Manufacturers or their representatives may visit or communicate with the Central Experiment Station, Bureau of Mines, 4800 Forbes Street, Pittsburgh 13, Pennsylvania, to discuss the requirements or regulations in this part in connection with a belt to be submitted for test. No charge is made for such consultation, and no formal report will be submitted to the manufacturer.

§ 34.4 *Application, fee, and sample.* (a) An application for investigation under this part shall be in duplicate, addressed to the Central Experiment Station, Bureau of Mines, 4800 Forbes Street, Pittsburgh 13, Pennsylvania, and shall include:

(1) Description and specifications of the conveyor belt, which may be supplemented by descriptive literature. Specifications shall include: Trade name of the conveyor belt; thickness of covers; designation of the compounds used in the manufacture of the covers, friction, and skim coats; number of plies; type and weight of ply materials; a designation of breaker strip or floated ply and any other features deemed significant by the applicant.

(2) A statement that the conveyor belt is completely developed and ready for market.

(3) A statement that the conveyor belt has been subjected to a flame test, the nature of the test, and results obtained.

(4) A request that the necessary tests leading to acceptance be made.

(b) Each application shall be accompanied by a check, draft, or money order, payable to the United States Bureau of Mines, to cover the cost of tests (see § 34.5).

(c) Two samples of the conveyor belt to be tested, each 6-feet long by 9-inches wide and having open edges, shall be delivered without charge to the Central Experiment Station, Bureau of Mines, 4800 Forbes Street, Pittsburgh 13, Pennsylvania. A conveyor belt will not be accepted for testing under this part unless the samples submitted are constructed in the form in which the belt is to be marketed. On receipt of this application, fee, and samples to be tested, the Bureau will act on the application.

§ 34.5 *Fees for testing conveyor belts.*

1. Flame test	$15.00
2. Drum-friction test	35.00

3. Fees for other tests will be based on the actual cost of testing, as determined by the Bureau, in which case the applicant will be notified and the fees paid before the tests are initiated.

§ 34.6 *Termination of investigation, disposal of fee and material.* Upon request by an applicant that the Bureau terminate its investigation of the conveyor belt, the Bureau will terminate the investigation, and will return to the applicant the fees paid by him, less such portion thereof as the Bureau determines is applicable to the testing already done. The Bureau of Mines may retain as its own property any or all material submitted by the applicant that may be required for record. Any material remaining after termination of tests and not required for record will be available to the applicant and will be returned at his expense on shipping instructions made in writing to the Central Experiment Station, Bureau of Mines, 4800 Forbes Street, Pittsburgh 13, Pennsylvania.

§ 34.7 *Date of tests.* Tests will be made in the order in which samples are received by the Bureau after applications have been filed and accepted; however, not more than three belts will be tested consecutively for any one manufacturer, if applications are on file from other manufacturers. The applicant will be notified of the date on which tests will be started. If a conveyor belt fails to meet any of the requirements set forth in this part, it shall lose its order of test precedence. Tests will be made on resubmitted samples following completion of other test work which is in progress at the time both the request and the materials for retesting are received. Exceptions to the provisions of this section may be made only for minor tests that may be performed simultaneously with other work in the laboratory.

§ 34.8 *Observers at formal investigations and demonstrations.* No one shall be present during any part of the formal investigation conducted by the Bureau which leads to acceptability except the necessary Government personnel, representatives of the applicant, and such other persons as may be mutually agreed upon by the applicant and the Bureau. Upon accepting a conveyor belt for listing as fire-resistant, the Bureau will announce that such acceptability has been granted and may thereafter conduct from time to time in its discretion public demonstrations of the tests conducted on the accepted conveyor belt. Those who attend any part of the investigation, or any public demonstration, shall be present solely as observers; the conduct of the investigation and of any public demonstration shall be controlled wholly by the Bureau's personnel. Results of chemical analyses of material and all information contained in the drawings, specifications, and instructions shall be deemed confidential and their disclosure will be appropriately safeguarded by the Bureau.

§ 34.9 *Types of tests.* To obtain acceptance under this part a conveyor belt must pass test 1 (Flame Test) and, when in the opinion of the Bureau it is required, test 2 (Drum-Friction Test)

§ 34.10 *Flame test*—(a) *Size of test specimens.* Specimens of conveyor belts 6 inches long by ½ inch wide by belt thickness shall be cut by Bureau test personnel from the belt sample submitted for testing to provide four test specimens, two of which will be cut parallel to the warp and two of which will be cut parallel to the weft.

(b) *Flame-test apparatus.* The principal parts of the apparatus within and appended to the 21-inch cubical test gallery are:

(1) A support stand with a ring clamp and wire gauze.

(2) A Pittsburgh-Universal Bunsen-type burner (inside diameter of burner tube 11 mm.) or equivalent, mounted in a burner placement guide in such a manner that the burner may be placed beneath the test specimen, or pulled away from it by an external knob on the front panel of the test gallery.

(3) A variable speed electric fan and an ASME flow nozzle (16–8½ inches reduction) to attain constant air velocities at any speed between 50–500 feet a minute.

(4) An electric timer or hand-operated stopwatch to measure the duration of the tests.

(5) A mirror mounted inside the test gallery to permit the test specimen to be viewed from the back through the viewing door.

(c) *Preparation of test specimen.* The specimen shall be clamped in a support with its longitudinal axis horizontal and its transverse axis inclined at 45° to the horizontal. Under the test specimen shall be clamped a piece of 20-mesh iron-wire gauze, 5 inches square, in a horizontal position ¼ inch below the pulley cover edge of the specimen and with about ½ inch of the specimen extending beyond the edge of the gauze.

(d) *Procedure for flame test.* The procedure for flame tests on conveyor belting is as follows:

(1) The support stand, with the test specimen mounted as described above, shall be positioned in the burner placement guide within the flame-test gallery.

(2) The Bunsen burner shall be adjusted to give a blue flame 3 inches in height having a temperature of 1350°± 50° F (732°±28° C.) when measured by means of a 20 B & S (Brown and Sharpe) gauge, iron-constantan thermocouple, centered in the flame at a point 1 inch above the top of the burner.

(3) The test specimen shall be inserted into the flame at a distance 1 inch above the top of the burner.

(4) The free end of the specimen shall be centered in the flame.

(5) The observation door of the gallery shall be closed for the entire test.

(6) The burner flame shall be applied to the test specimen for 1 minute in still air.

(7) At the end of one minute, the burner flame shall be removed, the ventilating fan turned on to give an air current having a velocity of 300 feet per minute, and the duration of flame measured.

(8) After the test specimen ceases to flame, it shall remain in the air current for at least 3 minutes to determine the presence and duration of afterglow. If a glowing specimen bursts into flame within 3 minutes, the duration of flame shall be added to the duration of flame in subparagraph (7) of this paragraph.

(9) The tests of the four specimens cut from any sample shall not result in either duration of flame exceeding an average of 1 minute after removal of the applied flame or afterglow exceeding an average of 3 minutes' duration.

§ 34.11 *Drum-friction test.* This test shall be applied only to samples which pass the flame test.

(a) *Size of test specimen.* A test specimen 5 feet long by 9 inches wide shall be cut from one of the two samples of conveyor belting submitted.

(b) *Drum-friction test apparatus.* The essential parts of the drum-friction test apparatus are:

(1) A suitable clamp for securing the fixed end of belt sample in test position and an adjustable weight clamp for the free end.

(2) Means for measuring accurately the temperature at specified points of the belt sample under test.

(3) Electric drive motor of at least 15 horsepower.

(4) Positive drive to maintain drum speed of 110±10 r. p. m.

(5) Drive pulley of at least 18 inches in diameter.

(6) Where drive pulleys in excess of 13 inches in width are used, insulation shall be provided for the portion of the face in excess of 13 inches and the ends of the drum to reduce heat loss. The test specimen shall cover approximately 180° of the exposed drum surface in test position.

(7) Scales, to be installed in the fixed clamp when tension measurement is desired.

(8) Multiple jets of compressed air, issuing from 1/16-inch-diameter holes on ½-inch centers along the top of a ½-inch pipe of the same length as the drum, to maintain an air velocity of 300 feet per minute at the surface of the drum.

(c) *Preparation of test specimen.* Two steel clamps, 12 inches long by 2 inches wide by ½ inch thick, shall be bolted onto the specimen approximately 1 inch from each end. One clamp, called the fixed clamp, is fitted with a chain and hook arrangement, while the other clamp, called the weight clamp, contains two rods to which weight bars may be attached. At three points along the

specimen from the fixed clamp, ⅛-inch holes shall be drilled into the edge of the belt to provide openings for thermocouples with which to measure belt temperatures. Two of these holes shall be at the point of tangency when the specimen is lapped over the conveyor driving drum, and the third shall be placed halfway between these points. The holes shall be drilled to a depth of 2 inches between the first and second ply from the pulley cover, or a similar position in case of solid woven belts. The specimen shall be placed over the conveyor driving drum; the hook fastened to a steel I-beam or other rigid support, secured to the floor beneath the drum; thermocouples inserted into the holes in the side of the belt; an additional thermocouple shall be inserted in the center of the carrying cover of the belt at a point midway between the thermocouples at the points of tangency and the proper weights adjusted at the weight clamp.

(d) *Procedure for drum-friction test.* The procedure for the drum-friction test is as follows:

(1) During the entire test a current of air having a velocity of 300 feet per minute shall be maintained at the drum and belt.

(2) With the specimen in the position described heretofore, the drum shall be revolved for a period of 120 minutes.

(3) Weights shall be attached to the weight clamp at the following time intervals:

Duration of test (cumulative)	Weight added (pounds)	Total weight on belt (pounds)
First 15 minutes		30
15 to 30 minutes	25	75
30 to 45 minutes	25	100
45 to 60 pounds	30	130
60 to 75 minutes	35	165
75 to 90 minutes	35	200
90 to 105 minutes	35	235
105 to 120 minutes	35	270

(4) Temperature readings shall be recorded at intervals of not more than 10 minutes throughout the test.

(5) A specimen that is destroyed during the test without signs of flame or glow, or that does not develop a temperature of 482° F. (250° C.) at any thermocouple during the 2-hour period, shall be considered fire-resistant.

(6) A specimen shall not be considered fire-resistant if any flame appears on the belt during a test.

(7) When glow is evident at the conclusion of a test, the glowing specimen shall be subjected to an air stream for 3 minutes. If the specimen bursts into flame within this time, or continues to glow beyond this time, it shall not be considered fire-resistant.

§ 34.12 *Changing details of tests.* The Bureau may modify the details of the tests prescribed by these regulations provided that the information obtained and the degree of safety are not substantially affected. The applicant will be notified of any changes that the Bureau deems advisable.

§ 34.13 *Notification of acceptance or rejection.* (a) After the Bureau has considered the results of the tests, a formal written notification of acceptance or rejection of the conveyor belt for listing will be supplied to the applicant by the Bureau. If the conveyor belt meets all requirements of this part, the notification will not be accompanied by test data or detailed results of tests. If the conveyor belt fails to meet any of the requirements of this part, the notification will be accompanied by details of the failure, with a view to possible remedy of the defect or defects in conveyor belts submitted in the future. Except for such notification to the applicant, results of tests of conveyor belts that fail to meet the requirements will not be made public by the Bureau.

(b) The Bureau will not give verbal reports concerning the investigations, or conduct informal tests, or grant informal acceptances.

§ 34.14 *Acceptance markings.* With formal notification of acceptance, the applicant will receive written permission to designate, as "fire-resistant," conveyor belts of the same type and composition as the specimen that passed the test.

(a) *Marking.* Conveyor belts accepted by the Bureau of Mines as fire-resistant shall be marked as follows: Metal stencils furnished by the manufacturer shall be used during the vulcanizing process to produce letters depressed into the conveyor belt with the words Fire-Resistant, U. S. B. M. No. ——. This number will be assigned to the manufacturer after the sample has passed the tests. The letters and numbers shall be at least ½ inch high.

(b) *Position of markings.* The acceptance markings shall be placed approximately 1 inch from the edge of the carrying (top) cover of the conveyor belt and spaced at intervals not exceeding 30 feet for the entire length of the conveyor belt. The markings shall be so placed that they are alternately at opposite edges of the belt.

§ 34.15 *Manufacturer's obligation.* A manufacturer who has obtained the Bureau's permission to place acceptance markings on conveyor belts manufactured by him is obligated to maintain the fire-resistant quality of his product and to have each conveyor belt so marked manufactured strictly according to the records that have been accepted and placed on file by the Bureau for that conveyor belt. Conveyor belts that have been accepted as fire-resistant by the Bureau of Mines but subsequently have been altered in design or composition without Bureau authorization, and belts that have not been accepted a fire-resistant by the Bureau of Mines, must not bear the Bureau's acceptance marking.

§ 34.16 *Changes subsequent to acceptance.* The manufacturer may obtain the Bureau's authorization for modifying the specifications of a conveyor belt that has been tested and accepted, by letter to the Central Experiment Station, Bureau of Mines, 4800 Forbes Street, Pittsburgh 13, Pennsylvania, requesting an extension of the original acceptance and stating the change or changes desired. The letter shall be accompanied by revised specifications showing the proposed changes in detail. If the Bureau determines that tests are unnecessary, the Bureau will formally advise the manufacturer of the acceptance or rejection of the proposed change. If the Bureau determines that tests are necessary, the Bureau will advise the manufacturer as to the fee and material required.

§ 34.17 *Withdrawal of acceptance.* The Bureau may rescind for cause, at any time, any acceptance granted under the regulations in this part.

ORME LEWIS,
Acting Secretary of the Interior.

AUGUST 26, 1955.

[F. R. Doc. 55-7032; Filed, Aug. 31, 1955; 8:48 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service and Commodity Credit Corporation

LENDING AGENCY AGREEMENT FOR COMMODITY LOANS ON GRAIN, SEED AND OTHER COMMODITIES SIMILARLY HANDLED

COMPENSATION

In order to encourage private lending agencies to retain their investment in loans made under Commodity Credit Corporation loan programs and thereby obtain a maximum amount of price support financing through private channels and reduce borrowings from the Treasury to a minimum, Commodity Credit Corporation hereby offers, in view of recent increases in interest rates, to pay to lending agencies who are party signatories to and operating under the CCC Form 322 (4-22-54) Lending Agency Agreement (for commodity loans on grain, seed and other commodities similarly handled) notwithstanding the rates specified in said Agreement, compensation for loans made pursuant to CCC commodity loan programs for 1955 crops and for loans made pursuant to CCC reseal loan programs for 1954 crops as follows:

1. If the Agency invests its funds in notes evidencing loans made by Agency under said Agreement or made by another lending agency under a Lending Agency Agreement with CCC, the Agency shall receive compensation for interest

on the funds invested and for the servicing of such loans as follows:

(a) On loan repayments to the Agency, compensation shall be at the rate of 2¾ percent per annum of the principal amount repaid: *Provided,* That with respect to each repayment either partial or in full on each such loan, the Agency shall be entitled to a minimum return of $5.00 or the full amount of the interest collected on the repayment at the rate of 3½ percent per annum, whichever is smaller.

(b) On notes purchased by CCC which are tendered at the option of the Agency, compensation shall be at the rate of 2¾ percent per annum on the outstanding principal balance.

(c) On notes purchased by CCC which are tendered upon demand by CCC, (1) on maturity of the notes except where CCC otherwise directs, or (2) upon receipt of knowledge of any defect or irregularity in the note or loan agreement or ineligibility of the commodity as security for loans, or knowledge of damage, destruction, or other impairment of the commodity, compensation shall be at the rate of 2¾ percent per annum on the outstanding principal balance: *Provided,* That on each note purchased the Agency shall be entitled to a minimum return of $5.00 or the full amount of accrued interest computed at 3½ percent per annum, whichever is smaller.

2. The rate of compensation provided herein shall apply, with respect to 1955 crop loans and loans made under 1954 crop reseal loan programs, to all repayments received on such loans by Agency on and after September 1, 1955, and to all purchases by CCC of notes evidencing such loans tendered by Agency on or after September 1, 1955. The compensation shall be computed at such rate from the respective dates of disbursement of the loans repaid or notes purchased.

Except as herein otherwise provided said Agreement shall remain unaffected. This offer may be amended or terminated upon the giving of notice thereof published in the FEDERAL REGISTER but any reduction in interest will not be made retroactive and in no event will the interest be reduced below that specified in said Agreement as originally executed.

Issued this 29th day of August 1955.

[SEAL] EARL M. HUGHES,
Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 55-7106; Filed, Aug. 31, 1955; 8:52 a. m.]

LENDING AGENCY AGREEMENT; COTTON COMPENSATION

In order to encourage private lending agencies to retain their investment in loans made under Commodity Credit Corporation loan programs and thereby obtain a maximum amount of price support financing through private channels and reduce borrowings from the Treasury to a minimum, Commodity Credit Corporation hereby offers, in view of recent increases in interest rates, to pay to lending agencies who are party signatories to and operating under the CCC Cotton Form D (6-15-54) Lending Agency Agreement—Cotton, notwithstanding the rates specified in said Agreement, compensation for loans made pursuant to the 1955 Cotton Loan Program as follows:

1. The compensation to be included in the purchase price of acceptable notes purchased by CCC pursuant to said Agreement shall consist of:

(a) A fee for services performed, computed at the rate of eight cents for each bale of cotton covered by the notes, and

(b) Interest on the principal amount of the notes at the rate of two and one-quarter percent (2¼%) per annum from the respective dates of disbursement of the loans to the date of purchase by CCC: *Provided,* That a fee computed at the rate of three cents for each bale of cotton covered by the notes shall be allowed in lieu of interest if Agency obtains payment by drawing a draft on CCC.

2. The compensation to be included in the face amount of Certificates issued for notes accepted for pooling pursuant to this Agreement shall be a fee for services performed, computed at the rate of eight cents for each bale of cotton covered by the notes.

3. Certificates issued for notes tendered and accepted for pooling pursuant to said Agreement shall bear interest at the rate of two and one-quarter percent (2¼%) per annum.

4. The rate of compensation provided herein shall apply to all notes evidencing loans made by Approved Lending Agencies on cotton of the 1955 crop year which are tendered on or after September 1, 1955, and accepted by CCC for purchase and to all Certificates of Interest, evidencing notes on cotton of the 1955 crop year which are tendered and accepted for pooling, outstanding on or issued on or after such date. The compensation shall be computed at such rate from the respective dates of disbursement of such notes tendered and accepted for purchase or from the date of the eligible Certificates of Interest.

Except as herein otherwise provided said Agreement shall remain unaffected. This offer may be amended or terminated upon the giving of notice thereof published in the FEDERAL REGISTER but any reduction in interest will not be made retroactive and in no event will the interest be reduced below that specified in said Agreement as originally executed.

Issued this 29th day of August 1955.

[SEAL] EARL M. HUGHES,
Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 55-7107; Filed, Aug. 31, 1955; 8:52 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

AUGUST 25, 1955.

The University of Alaska has filed an application, Serial No. Anchorage 028022, for the withdrawal of the lands described below, from all forms of appropriation including the mining and mineral leasing laws. The applicant desires the land for a site for a cosmic ray research station and laboratory

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

Corner No. 1

Corner No. 1 consists of a rock cairn atop the small peak bordering the major inactive crater of Mount Wrangell. The peak lies approximately 1.8 miles on a line about 4 degrees east of north from the north boundary of the active crater of Mt. Wrangell. The peak may be further defined as lying on the edge of both the major inactive crater of Mt. Wrangell and the smaller inactive crater lying atop the northwest edge of the above-mentioned major inactive crater. The peak is approximately 14,000 feet high and has an approximate latitude of 62°00'50" N. and longitude 144°05'00" W.

For location of the peak with respect to established bench marks, the following distances and directions from various bench marks are given. These distances and directions were measured from the Valdez and Gulkana Quadrangle maps of the Alaska Reconnaissance topographic series, scale 1:250,000 (1951). Azimuths are given using true north as 0° and proceeding clockwise with increasing angles.

Benchmark	Distance to peak	Azimuth from benchmark
VABM 2601	32.3 miles	133.2°
VABM 2943	32.3 miles	108.7°
VABM 30.17	30.7 miles	100.1°
VABM 1440	34.09 miles	63.5°
BM 1240	30.0 miles	21.0°

Starting from corner No. 1 the boundary runs due east 5,280 feet to corner No. 2, thence due south 5,280 feet to corner No. 3, thence due west 5,280 feet to corner No. 4, thence due north 5,280 feet to corner No. 1. No monuments are located at corners 2, 3, and 4 since these points lie on a snowfield which has a tendency to be unstable.

Containing approximately 640 acres.

LOWELL M. PUCKETT,
Area Administrator

[F. R. Doc. 55-7080; Filed, Aug. 31, 1955; 8:47 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

AUGUST 25, 1955.

Territorial Department of Lands has filed an application, Serial No. Anchorage 026810, for the withdrawal of the lands described below, from all forms of

appropriation including the general mining laws. The applicant desires the land for public recreational and campground purposes.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NANCY LAKE AREA

SEWARD MERIDIAN

T. 19 N., R. 4 W.,
Section 34: Lots 4, 19, S½SW¼NE¼.

Containing 63.14 acres.

LOWELL M. PUCKETT,
Area Administrator

[F. R. Doc. 55-7081; Filed, Aug. 31, 1955; 8:47 a. m.]

Office of the Secretary

RECORDATION OF SCRIP, LIEU SELECTION, AND SIMILAR RIGHTS

1. Notice is hereby given that the act of August 5, 1955 (69 Stat. 534, 535) requires that any owner of, or any person claiming rights to, the scrip, lieu selection, and similar rights described in paragraph 2 of this notice must present his holdings or claim for recordation by the Department of the Interior.

2. The types of scrip, lieu selections and similar rights to which the act applies include the following, with the stated exception:

(a) Valentine scrip issued under the act of April 5, 1872 (17 Stat. 649)

(b) Sioux Half-Breed scrip issued under the act of July 17, 1854 (10 Stat. 304)

(c) Supreme Court scrip issued under the act of June 22, 1860 (12 Stat. 85) March 2, 1867 (14 Stat. 544) and June 10, 1872 (17 Stat. 378)

(d) Surveyor-General scrip issued under the act of June 2, 1858 (11 Stat. 294)

(e) Soldiers' additional homestead right granted by sections 2306 and 2307 of the Revised Statutes.

(f) Forest lieu selection right assertable under the act of March 3, 1905 (33 Stat. 1264)

(g) Lieu selection right conferred by the act of July 1, 1898 (30 Stat. 597)

(h) Bounty land warrant issued under the act of March 3, 1855 (10 Stat. 701)

(i) Any lieu selection or scrip right or bounty land warrant, or right in the nature of scrip issued under any act of Congress not enumerated above except indemnity selection rights of any State or the Territory of Alaska.

3. In order to comply with the terms of the act, present owners of, and persons now claiming rights to, any scrip, lieu selection, or similar rights described above must present their claims or holdings for recordation to the Director, Bureau of Land Management, Washington 25, D. C., within two years from August 5, 1955. Persons who, by transfer (by assignment, inheritance, operation of law, or otherwise) become owners of, or claimants of rights to, any such rights which are hereafter recorded under this act must present their claims or holdings for recordation to the Director, Bureau of Land Management, within six months after such transfer. Persons who, by transfer within the said period of two years from August 5, 1955, become owners of, or claimants of rights to, any such rights which have not been recorded under this act, must present their claims or holdings for recordation to the Director, Bureau of Land Management, during the remainder of the said period of two years from August 5, 1955, or within six months from the date of such transfer, whichever period is longer.

4. Claims or holdings not presented for recordation as prescribed by this notice will not thereafter be accepted by the Department of the Interior for recordation or as a basis for the acquisition of lands.

5. Persons who desire to record their holdings or claims under this act must present the following to the Director, Bureau of Land Management, Washington 25, D. C., within the time periods prescribed in paragraph 3 above:

(a) A statement, in duplicate, captioned "Application for Recordation of Scrip, Lieu Selection, or Similar Rights under the act of August 5, 1955 (69 Stat. 534)" containing the (1) name and full post-office address of the applicant, (2) names and full post-office address of all the owners or claimants of the right presented for recording, (3) the type of scrip or right presented (see paragraph 2 above) and (4) the acreage of such scrip or right.

(b) The scrip, warrant, or other document which evidences their right, providing their right is based on such a document.

(c) A statement, in duplicate, showing the basis of their right, providing the right is not based on scrip, warrant, or other document.

6. Persons who mail valuable documents to the Director, Bureau of Land Management, should consider the advisability of sending them by registered mail to insure delivery.

7. Upon receipt of an application for recordation, the Director, Bureau of Land Management, will make a record of the holding or claim in the name of the owners or claimants cited in the application; will note the documentary evidence of right submitted (or one copy of the statement showing the basis of the right, if there be no documentary evidence) with the date and place of recording; and will return the evidence to the applicant. Such notation will constitute evidence merely that the holding or claim was recorded under the act and will otherwise have no bearing, one way or another, on the validity of the claim.

ORME LEWIS,
Acting Secretary of the Interior.

AUGUST 26, 1955.

[F. R. Doc. 55-7033; Filed, Aug. 31, 1955; 8:48 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 6114 et al.]

MACKEY AIRLINES, INC., CERTIFICATE RENEWAL CASE

NOTICE OF HEARING

In the matter of the application of Mackey Airlines, Inc., for renewal of its temporary certificate of public convenience and necessity for route No. 112 authorizing foreign transportation of persons and property between the coterminal points Tampa, Fla., St. Petersburg, Fla., the intermediate points West Palm Beach-Palm Beach, Fla., and Fort Lauderdale, Fla., and the terminal point Nassau, British West Indies, on and after August 5, 1955; the designation of Biminis, British West Indies, Great Abaco Island, British West Indies, and the Eleuthera Island, British West Indies, as new intermediate points between the intermediate point Fort Lauderdale, Fla., and the terminal point Nassau, British West Indies; authorization of a new segment of route 112 between the coterminal points West Palm Beach-Palm Beach, Fla., and Fort Lauderdale, Fla., the intermediate point Havana, Cuba, and the terminal point Nassau, British West Indies; and authority to carry mail.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that a hearing in the above-entitled proceeding will be held on September 20, 1955, at 10:00 a. m., (eastern standard time) in the Marlin Beach Hotel, 17 South Atlantic Boulevard, Fort Lauderdale, Fla., before Curtis C. Henderson, Hearing Examiner.

Without limiting the scope of the issues presented by the applications, particular attention will be directed to the following matters:

1. Do the public convenience and necessity require the amendment of the temporary certificate of Mackey Airlines, Inc., for route No. 112 so as to renew said certificate (a) either in whole or in part (b) for a period of 3 years after August 5, 1955, or (c) for such other period of time as the Board may deem appropriate?

2. Do the public convenience and necessity require the amendment of Mackey's certificate for route No. 112, as it may hereinafter be renewed, so as to authorize Mackey to serve any one or more or all of the points listed below or as may be in the immediate vicinity of:

(1) The Biminis, British West Indies;

(2) Great Abaco Island, British West Indies, and

(3) Eleuthera Island, British West Indies?

3. Do the public convenience and necessity require the amendment of

Mackey's certificate for route No. 112, as it may hereinafter be renewed, so as to authorize Mackey to operate over a route:

Between the coterminal points West Palm Beach-Palm Beach, Fla., and Fort Lauderdale, Fla., the intermediate point Havana, Cuba, and the terminal point Nassau, British West Indies?

4. Do the public convenience and necessity require the amendment of Mackey's certificate for route No. 112, as it may hereinafter be renewed, so as to authorize Mackey to engage in the air transportation of mail?

5. If it is determined that the public convenience and necessity require the renewal of Mackey's certificate for route No. 112, and/or the additional authority sought herein, is Mackey (1) a citizen of the United States within the meaning of section 1 (13) of the Act, and (2) is it fit, willing, and able within the meaning of section 401 to perform the transportation proposed by Amendment No. 4 of its application, Docket No. 6114?

6. Do the public convenience and necessity require the issuance of a certificate of public convenience and necessity in Docket No. 6717 to Eastern Air Lines, Inc., authorizing a new foreign air route from (a) Tampa, Fla., to Nassau, British West Indies, via the intermediate points St. Petersburg, Fla., Clearwater, Fla., West Palm Beach-Palm Beach, Fla., and Fort Lauderdale, Fla., and (b) is it fit, willing, and able within the meaning of section 401 of the Act?

7. Do the public convenience and necessity require the issuance of a certificate of public convenience and necessity in Docket No. 6685 to National Airlines, Inc., for a new foreign air route between (a) West Palm Beach, Fla., and Nassau, British West Indies, (b) Nassau, British West Indies, and Havana, Cuba, and (c) is it fit, willing, and able within the meaning of section 401 of the act?

For further details of the issues involved in this proceeding interested persons are referred to the applications on file with the Docket Section, Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in this proceeding should file with the Board on or before September 20, 1955, a statement setting forth the issues of fact or law desired to be controverted.

Dated at Washington, D. C., August 29, 1955.

[SEAL] FRANCIS W BROWN,
Chief Examiner

[F. R. Doc. 55-7099; Filed, Aug. 31, 1955; 8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-9258]

SKELLY OIL CO.

ORDER SUSPENDING PROPOSED CHANGES IN RATES

Skelly Oil Company (Applicant) on August 1, 1955, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on date shown:

Description	Purchaser	Rate schedule designation	Effective date [1]
Notice of change, dated July 28, 1955.	Texas Illinois Natural Gas Pipeline Co.	Supplement No. 5 to applicant's FPC gas rate schedule No. 12.	Sept. 1, 1955

[1] The stated effective date is the first day after expiration of the required 30 days' notice, or the effective date proposed by applicant if later.

Supplement No. 5 to Applicant's FPC Gas Rate Schedule No. 12 includes a proposed change effective September 1, 1955, in Texas gas production tax, as well as a proposed periodic increase in rates for gas sold.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes insofar only as the designated supplement pertains to a periodic increase in rates for gas sold, and that the above-designated supplement to that extent be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's General Rules and Regulations (18 CFR, Chapter I) a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement, insofar only as it pertains to proposed periodic increase in rates for gas sold, be and the same hereby is suspended and the use thereof deferred until February 1, 1956, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Interested State commissions may participate as provided by sections 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37 (f).)

Adopted: August 25, 1955.

Issued: August 26, 1955.

By the Commission.[2]

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7084; Filed, Aug. 31, 1955; 8:48 a. m.]

[Docket No. G-9259]

STANOLIND OIL AND GAS CO.

ORDER SUSPENDING PROPOSED CHANGES IN RATES

Stanolind Oil and Gas Company (Applicant) tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings which are proposed to become effective on the dates shown:

Description	Filing date	Purchaser	Rate schedule designation	Effective date [1]
Supplemental agreement, dated Apr. 15, 1955.	July 28, 1955	Texas Illinois Natural Gas Pipeline Co.	Supplement No. 2 to applicant's FPC gas rate schedule No. 51.	Sept. 1, 1955
Notice of change, dated July 28, 1955.	do	do	Supplement No. 3 to applicant's FPC gas rate schedule No. 51.	Do.
Supplemental agreement, dated Apr. 15, 1955.	do	do	Supplement No. 5 to applicant's FPC gas rate schedule No. 60.	Do.
Notice of change, dated July 27, 1955.	do	do	Supplement No. 6 to applicant's FPC gas rate schedule No. 60.	Do.

[1] The stated effective date is the first day after expiration of the required 30 days' notice, or the effective date proposed by applicant if later.

The increased rates and charges proposed in the aforesaid filings have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's General Rules and Regulations (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplements be and the same hereby are suspended and the use thereof deferred until February 1, 1956, and until such

[2] Acting Chairman Digby dissenting.

further time as they are made effective in the manner prescribed by the Natural Gas Act.

(B) Interested State commissions may participate as provided by sections 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37 (f))

Adopted: August 25, 1955.

Issued: August 26, 1955.

By the Commission.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 55-7085; Filed, Aug. 31, 1955; 8:48 a. m.]

[Docket Nos. G-7232 and G-4006]

EDWIN L. COX AND C. P. BURTON

NOTICE OF APPLICATIONS AND DATE OF HEARING

AUGUST 26, 1955.

Take notice that Edwin L. Cox and C. P Burton (Applicants) individuals whose addresses are 1217 Magnolia Building, Dallas, Texas, and the Continental Building, Dallas, Texas, respectively, filed on December 1, 1954, and October 1, 1954, respectively, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Applicants produce natural gas from 120 acres of the North Brady Field, Garvin County, Oklahoma, which they sell to the Lone Star Gas Company at 10 cents per Mcf for transportation in interstate commerce for resale.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on Wednesday, September 28, 1955 at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 13, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 55-7086; Filed, Aug. 31, 1955; 8:49 a. m.]

[Docket No. G-7252]

CLARK GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

AUGUST 26, 1955.

Take notice that the Clark Gas Company (Applicant), a partnership whose address is Hamlin, West Virginia, filed on December 1, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas from 100 acres of the G. C. Clark Field, Curry District, Putnam County, West Virginia, which it sells to the South Penn Natural Gas Company at 12 cents per Mcf for transportation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on Wednesday, September 28, 1955 at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 13, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 55-7087; Filed, Aug. 31, 1955; 8:49 a. m.]

[Docket Nos. G-8705 and G-8905]

TEXAS ILLINOIS NATURAL GAS PIPELINE CO. ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

AUGUST 26, 1955.

In the matters of Texas Illinois Natural Gas Pipeline Company, and Natural Gas Storage Company of Illinois, and Texas Illinois Natural Gas Pipeline Company.

Take notice that Texas Illinois Natural Gas Pipeline Company (Texas Illinois) a Delaware corporation and Natural Gas Storage Company of Illinois (Storage Company) an Illinois corporation, with their principal place of business at 20 North Wacker Drive, Chicago, Illinois, filed on March 30, 1955, as supplemented on April 28, 1955, a joint application in Docket No. G-8705 for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing construction and operation of a meter and regulating station and appurtenant facilities for the sale of gas as hereinafter described, subject to the jurisdiction of the Commission all as more fully represented in the application which is on file with the Commission and open for public inspection.

Texas Illinois proposes to construct and operate the meter and regulator station and to sell and deliver natural gas to Northern Illinois Gas Company for resale in the Village of Herscher, Illinois. Storage Company requests authority to establish connection with the proposed meter and regulator station and to transport natural gas for the account of Texas Illinois.

Take notice further that Texas Illinois filed, on May 16, 1955, as supplemented on June 27, 1955, an application in Docket No. G-8905 for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing Texas Illinois to construct and operate a meter and regulator station for the purpose of selling and delivering additional volumes of natural gas to Northern Illinois Gas Company for resale in the communities of Braidwood, Coal City, Mazon and Wilmington, Illinois. The application is on file with the Commission and open for public inspection.

These matters should be heard on a consolidated record and disposed of as promptly as possible under applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on September 28, 1955, at 9:30 a. m., e. s. t., in a Hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the

Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 15, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7088; Filed, Aug. 31, 1955; 8:49 a. m.]

[Docket No. G-9203]

TEXAS GAS TRANSMISSION CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

AUGUST 26, 1955.

Take notice that Texas Gas Transmission Corporation (Applicant) a Delaware corporation, whose address is 416 West Third Street, Owensboro, Kentucky, filed on August 8, 1955, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to construct and operate gas facilities as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate 5.99 miles of 8-inch line and related facilities in order to loop a portion of an existing 8-inch line serving Owensboro, Kentucky in order to serve the anticipated peak day requirements to an existing customer during the immediate winter season of 1955-56.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on September 23, 1955, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.32 (b) of the Commission's Rules of Practice and Procedure as requested by Applicant.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 9, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7094; Filed, Aug. 31, 1955; 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3404]

COLUMBIA GAS SYSTEM, INC.

ORDER AUTHORIZING PROPOSED BANK BORROWINGS

AUGUST 26, 1955.

The Columbia Gas System, Inc. ("Columbia") a registered holding company, has filed a declaration pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 regarding the following proposed transactions:

Columbia proposes to borrow $25,000,000 in aggregate amount from ten commercial banks, to be evidenced by notes dated August 31, 1955, and maturing on July 31, 1956. The notes will bear interest at the rate of 3 percent per annum and may be prepaid on 10 days' notice without penalty. Columbia agrees, however, that no prepayment will be made with funds borrowed from banks at a lower rate of interest. The names of the lending banks and their respective participations are as follows:

Guaranty Trust Co. of New York	$9,000,000
Bankers Trust Co	2,500,000
Chemical Bank & Trust Co	2,500,000
Irving Trust Co	2,500,000
Mellon National Bank & Trust Co	2,500,000
The Hanover Bank	1,000,000
Brown Bros., Harriman & Co	1,000,000
The First National City Bank of New York	2,000,000
J. P. Morgan & Co., Inc	1,000,000
Manufacturers Trust Co	1,000,000
Total	25,000,000

The proceeds of said borrowings will be used to repay 3 percent bank loans in the same principal amount which will mature on August 31, 1955. Said loans were negotiated in 1954 to repay 3¼ percent bank loans in the same principal amount which matured September 30, 1954. The bank loans when originally executed were made for construction purposes.

Columbia has heretofore in 1955 borrowed from banks $15,000,000 to provide for additional plant facilities and $35,000,000 for the purchase of inventory gas. It is anticipated that the latter amount will be repaid as the inventory gas is sold during the coming heating season.

Plans are now being developed for the sale by Columbia in September 1955 of $40,000,000 principal amount of senior debentures. The proceeds from such sale will be used, in part, to complete the 1955 construction program and the balance, presently estimated at $20,000,000, will be used to prepay a like amount of construction bank loans.

Due notice having been given of the filing of said declaration, and a hearing not having been requested of or ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration as amended be permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said declaration as amended be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 55-7089; Filed, Aug. 31, 1955; 8:49 a. m.]

[File No. 24NY-3783]

SELEVISION WESTERN, INC.

NOTICE OF AND ORDER FOR HEARING

AUGUST 26, 1955.

Selevision Western, Inc., having filed with the Commission on August 27, 1954, a Notification on Form 1-A for the purpose of obtaining an exemption from the registration provisions of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder; and

The Commission, on August 3, 1955, having issued an order, pursuant to Rule 223 (a) of the General Rules and Regulations under the Securities Act of 1933, temporarily suspending the conditional exemption under Regulation A and affording to any person having any interest therein an opportunity to request a hearing pursuant to said Rule 223, and a written request for a hearing having been received by the Commission on August 16, 1955; and

The Commission deeming it necessary and appropriate to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption:

It is hereby ordered, Pursuant to Rule 223 of the General Rules and Regulations under the Securities Act of 1933, that a public hearing be held on Thursday, September 1, 1955, at 10:00 a. m., eastern daylight saving time, at the New York office of the Commission, at 42 Broadway, New York, N. Y., for the purpose of taking evidence to determine:

(1) whether the matters set forth in section II of the order dated August 3, 1955, are true; and

(2) whether the temporary suspension order of August 3, 1955, against Selevision Western, Inc., should be vacated or made permanent,

It is further ordered, That James G. Ewell or any officer or officers of the Commission designated by it for that purpose, shall preside at the hearing and any officer or officers so designated to preside at such hearing are hereby

authorized to exercise all of the powers granted to the Commission under sections 19 (b) 21 and 22 (c) of the Securities Act of 1933, as amended, and to hearing officers under the Commission's Rules of Practice.

It is further ordered, That this order and notice shall be served upon Selevision Western, Inc., 52 Wall Street, New York 5, New York, United States Corporation Company, 15 Exchange Place, Jersey City 2, New Jersey, and Whitney-Phoenix Corporation, 52 Wall Street, New York 5, New York, personally or by registered mail or confirmed telegraphic notice, and shall be published in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 55-7090; Filed, Aug. 31, 1955; 8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 29, 1955.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 31017: *Pig iron—North Tonawanda, N. Y., to Bayonne, N. J.* Filed by C. W. Boin, Agent, for interested rail carriers. Rates on pig iron, carloads from North Tonawanda, N. Y. to Bayonne, N. J.

Grounds for relief: Barge-rail competition, and circuity.

Tariff: Supplement 21 to Erie Railroad tariff I. C. C. 20891 and two other tariffs.

FSA No. 31018: *Salt—Louisiana to Calvert, Ky.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on mine run salt, in bulk, carloads from Anse La Butte, Avery Island, Jefferson Island, and Weeks, La., to Calvert, Ky.

Grounds for relief: Carrier competition and circuity.

Tariff: Supplement 55 to Agent Kratzmeir's I. C. C. 3903.

FSA No. 31019: *Liquefied petroleum gas to Portsmouth, Ohio.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on liquefied petroleum gas, tankcar loads from specified points in Kansas, Louisiana, Missouri, Oklahoma and Texas to Portsmouth, Ohio.

Grounds for relief: Carrier competition and circuity.

Tariff: Supplement 23 to Agent Kratzmeir's I. C. C. 4005.

FSA No. 31020: *Soda and soda products from and to Points in Illinois on the C. A. & E. Ry. Co.* Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on soda and soda products, carloads, as described in exhibit A of fourth-section application No. 29444 between points in official territory, on the one hand, and points on the Chicago, Aurora and Elgin Railway Company, on the other.

Grounds for relief: Short-line distance formula, carrier competition, and circuity.

Tariff: Supplement 152 to Agent Hinsch's I. C. C. 3779 and ten other tariffs.

FSA No. 31021. *Adipic acid—Chattanooga and North Chattanooga, Tenn., to Orange, Tex.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on adipic acid, carloads, from Chattanooga and North Chattanooga, Tenn., to Orange, Tex.

Grounds for relief: Carrier competition and circuity.

Tariff: Supplement 81 to Agent Kratzmeir's I. C. C. 4115.

FSA No. 31022: *Pipe—Houston, Tex., to Mississippi Valley.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on pipe and tubing, iron or steel, wrought, welded or seamless, straight or mixed carloads from Houston, Tex., to specified points in Kentucky, Mississippi and Tennessee.

Grounds for relief: Circuitous routes.

Tariff: Supplement 3 to Agent Kratzmeir's I. C. C. 4170.

FSA No. 31023: *Ethylene glycol between Texas ports and Graingers, N. C.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on ethylene glycol, tank-car loads between North Seadrift, Port Neches, Texas City and Velasco, Tex., on one hand, and Graingers, N. C., on the other.

Grounds for relief: Water-truck competition and circuity.

Tariff: Supplement 20 to Agent Kratzmeir's I. C. C. 4094.

FSA No. 31024. *Commodities from and to the Southwest.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on various commodities, carloads, as described in exhibit A of the application from and to specified points in southwestern territory as shown in exhibit A of the application.

Grounds for relief: Competition and circuity.

FSA No. 31025: *Substituted rail service—Rates in California.* Filed by J. P. Haynes, Agent, for interested rail carriers. Rates on various classes and commodities, in highway motor-truck trailers, loaded on railroad flat cars between points in California over intrastate routes.

Grounds for relief: "Trailer-flat-car" rates constructed on short line distance formula, intrastate competition and circuity.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 55-7095; Filed, Aug. 31, 1955; 8:51 a. m.]